

**FERMI RESEARCH ALLIANCE, LLC (FRA) TERMS AND CONDITIONS  
RESEARCH AND DEVELOPMENT SUBCONTRACTS  
For educational institutions  
(FIXED-PRICE)**

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## 1. DEFINITIONS

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" or "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof.
- (c) The term "FRA" shall mean Fermi Research Alliance, LLC, a private, not-for-profit Limited Liability Company that manages and operates the Fermi National Accelerator Laboratory under U.S. Department of Energy Contract No. DE-AC02-07CH11359, and includes the successor to or any duly authorized representatives thereof.
- (d) The term "Fermilab" shall mean the physical site of the Fermi National Accelerator Laboratory, including property, facilities, equipment and accumulated technical data that are owned by the United States Government.
- (d) Except as otherwise provided in this Subcontract, the term "sub-subcontracts" includes purchase orders under this Subcontract.
- (e) "FRA Procurement Administrator" shall mean the person in charge of the Procurement for this Subcontract on behalf of FRA or his/her written designee.
- (f) As used in any FL that is a part of this Subcontract, the term "outlying areas" shall mean – the Commonwealths of Puerto Rico and the Northern Mariana Islands; the Territories of American Samoa, Guam, and the U.S. Virgin Islands; and the minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

1.2 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

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 FRA 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 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 "FRA."

### **3. PAYMENTS**

**3.1** Once each month (or at more frequent intervals, if approved by FRA), the Subcontractor may submit to the Manager invoices or vouchers in such form and detail and supported by such documents as provided below. Within 30 days after receipt of each invoice or voucher FRA shall, subject to the provisions of this Subcontract, make payment thereon as approved by FRA.

**3.2** At any time prior to final settlement under this Subcontract, representatives of FRA or its designees will have access to and the right to audit Subcontractor's invoices, vouchers, statement of cost, books and records to determine the correctness and propriety of payments made under this Subcontract. Each payment theretofore made shall be subject to adjustment for amounts included in the related invoice or voucher on the basis of such audit. Any payment may be reduced for overpayments, or increased for under payments, on preceding invoices or vouchers.

**3.3** The Subcontractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Subcontractor or any assignee under this Subcontract shall be paid by the Subcontractor to FRA, to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by FRA under this Subcontract. Reasonable expenses incurred by the Subcontractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by FRA.

#### **3.4 CLAIMS FOR PAYMENTS.**

Claims for payments shall be accompanied by such supporting documents and justification as FRA shall require.

#### **3.5 INVOICING.**

The Subcontractor shall submit invoices bearing this Subcontract number, in duplicate, to Manager, FRA, P.O. Box 500, Batavia, Illinois 60510.

### **4. CONVICT LABOR**

Except as provided in paragraph (a) 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.

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

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

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

(iii) 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 –

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

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

(C) 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;

- (D) 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
- (E) 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 DEFINITIONS. 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 FRA.

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 FRA 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 FRA directs.

5.8 FRA 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

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

- (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 VEVRAA 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 FRA. 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 threatening to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice, including all relevant information, to FRA.
- 7.2** The Subcontractor agrees to insert the substance of this clause, including this section 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

**This clause applies to Subcontracts in excess of \$700,000 (\$1,500,000 for construction), unless the Subcontractor is a small business concern.**

### 8.1 Definitions. As used in this Subcontract –

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

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

(1) Means a small business concern –

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

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

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

- (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
- (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

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

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

**8.2** It is the policy of the United States, the Department of Energy, and FRA that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency or FRA, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States and the Department of Energy 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 Subcontract 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 of Energy as may be necessary to determine the extent of the Subcontractor’s compliance with this clause.

**8.4 (a)** The Subcontractor may accept a sub-subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the sub-subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(b) The Subcontractor may accept a sub-subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

- (i) The sub-subcontractor is registered in SAM; and
- (ii) The sub-subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(c) The Subcontractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(d) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a Subcontractor acting in good faith is not liable for misrepresentations made by its sub-subcontractors regarding the sub-subcontractor's size or socioeconomic status.

(e) 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 express authorized in writing by FRA. FRA 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 \$150,000.

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 FRA, or an authorized representative of FRA, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred 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, FRA, or an authorized representative of FRA, 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 or 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, FRA or an authorized representative of FRA 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 procedure 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 paragraph 10.2 through 10.6 of this clause, for examination, audit, or reproduction, for 3 years after final payment under this Subcontract, 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 sub-subcontracts under this Subcontract that exceed \$100,000, and ---

- (a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable 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.

**11. EQUAL OPPORTUNITY**

**11.1 This clause applies to all Subcontracts, unless exempt under Executive Order 11246.**

**11.1 Definitions.** As used in this clause.

“Compensation” means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

“Compensation information” means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

“Essential job functions” means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if–

- (1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or
- (2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“United States,” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

11.2 If, during any 12-month period (including the 12 months preceding the award of this contract), 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 (a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(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, sexual orientation, gender identity, or national origin. This shall include, but not be limited to—

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

(c) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices that can be downloaded from <https://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>.

(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, sexual orientation, gender identity, or national origin.

(e)(i) The Subcontractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subcontractor’s legal duty to furnish information.

(ii) The Subcontractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—

- (A) Incorporation into existing employee manuals or handbooks; and
- (B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(f) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice (download location specified above) 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.

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

(h) The Subcontractor shall furnish to FRA all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the Subcontractor shall, 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.

(i) The Subcontractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit the FRA or the United States 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.

(j) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this Subcontract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further 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.

(k) The Subcontractor shall include the terms and conditions of this clause in every sub-subcontract or purchase order related to this Subcontract 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 sub-vendor.

(l) The Subcontractor shall take such action with respect to any sub-subcontract or sub-purchase order as the Director of OFCCP 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 sub-vendor as a result of any direction, the Subcontractor may request the United States or FRA to enter into the litigation to protect the interests of the United States or FRA.

11.5 Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

## 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

**This clause applies to Subcontracts in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary of Labor.**

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

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

#### **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 FRA. 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 therefor shall also be furnished. The justification shall be furnished by the date specified by FRA.

**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 of the Federal Acquisition Regulation (48 C.F.R. 31) in effect on the date of this Subcontract.

#### **15. SUB-SUBCONTRACTS FOR COMMERCIAL ITEMS**

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

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

**15.2** To the maximum extent practicable, the Subcontractor shall incorporate, and require its sub-subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this Subcontract.

**15.3** (a) The Subcontractor shall insert the following clauses in sub-subcontracts for commercial items:

- (i) FAR 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2015) (41 U.S.C. 3509), if the sub-subcontract exceeds \$5.5 million 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.
- (ii) FAR 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 sub-subcontract is funded under the Recovery Act.
- (iii) FAR [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).
- (iv) FAR [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than sub-subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).
- (v) FAR 52.219-8, Utilization of Small Business Concerns (NOV 2016) (15 U.S.C. 637(d)(2) and (3)), if the sub-subcontract offers further sub-subcontracting opportunities. If the sub-subcontract (except sub-subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the sub-subcontractor must include 52.219-8 in lower tier subcontracts that offer sub-subcontracting opportunities.
- (vi) FAR 52.222-21, Prohibition of Segregated Facilities (APR 2015)
- (vii) FAR 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).
- (viii) FAR 52.222-35, Equal Opportunity for Veterans (OCT 2015) (38 U.S.C. 4212(a));

- (ix) FAR 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).
  - (x) FAR 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).
  - (xi) FAR 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.
  - (xii) (A) FAR 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O. 13627).  
(B) Alternate I (MAR 2015) of FAR 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
  - (xiii) FAR 52.222-55 Minimum Wages under Executive Order 13658 (DEC 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.  
Note to paragraph (FAR 52.244-6(c)(1)(xiii)): By a court order issued on October 24, 2016, this paragraph is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, GSA, DoD and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.
  - (xiv) FAR [52.222-59](#), Compliance with Labor Laws (Executive Order 13673) (OCT 2016), if the estimated subcontract value exceeds \$500,000, and is for other than commercially available off-the-shelf items.
  - (xv) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (OCT 2016), if the estimated subcontract value exceeds \$500,000, and is for other than commercially available off-the-shelf items.
  - (xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause [52.222-62](#).
  - (xvii)(A) [52.224-3](#), Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).  
(B) Alternate I (JAN 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3](#)(f) and the agency specifies that only its agency-provided training is acceptable.
  - (xviii) FAR 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
  - (xix) FAR 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.
  - (xx) FAR 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.
- (b) While not required, the Subcontractor may flow down to sub-subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

15.4 The Subcontractor shall include the terms of this clause, including this paragraph 3.4, in sub-subcontracts awarded under this contract.

## 16. EMPLOYMENT REPORTS VETERANS AND COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS

**This clause applies to Subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.**

### 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-4212, entitled "Federal Contractor Veterans' Employment Report (VETS-4212 Report)." See "VETS-4212 Federal Contractor reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>

16.4 The Subcontractor shall submit VETS-4212 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-4212. 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 \$150,000 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. FRA-FURNISHED PROPERTY

### 17.1 FRA PROPERTY.

- (a) FRA shall deliver to the Subcontractor, for use in connection with and under the terms of this Subcontract, the FRA-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 "FRA-furnished property").
- (b) The delivery or performance dates for this Subcontract are based upon the expectation that FRA-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 FRA-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify FRA, detailing the facts, and, as directed by FRA and at FRA expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, FRA shall make an equitable adjustment as provided in paragraph 17.8 of this clause.



- (d) If FRA-furnished property is not delivered to the Subcontractor by the required time, FRA 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 FRA-FURNISHED PROPERTY.

- (a) FRA may, by written notice—
  - (i) Decrease the FRA-furnished property provided or to be provided under this Subcontract, or
  - (ii) Substitute other FRA-furnished property for the property to be provided by FRA, or to be acquired by the Subcontractor for FRA, under this Subcontract. The Subcontractor shall promptly take such action as FRA may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (b) Upon the Subcontractor's written request, FRA shall make an equitable adjustment to the Subcontract in accordance with paragraph 17.8 of this clause, if FRA 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 FRA-furnished property.
- (b) All FRA-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "FRA 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 FRA-furnished property shall not be affected by its incorporation into or attachment to any property not owned by FRA, nor shall FRA-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 FRA under this Subcontract shall pass to and vest in the Government when its use in performing this Subcontract commences or when FRA 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 FRA 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 FRA, whichever occurs first.

#### 17.4 USE OF FRA-FURNISHED PROPERTY

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

#### 17.5 PROPERTY ADMINISTRATION.

- (a) The Subcontractor shall be responsible and accountable for all FRA-furnished property provided under this Subcontract and shall comply with 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 FRA-furnished property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
- (c) If damage occurs to FRA-furnished property, the risk of which has been assumed by FRA under this Subcontract, FRA shall replace the items or the Subcontractor shall make such repairs as FRA directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by FRA. When any property for which FRA is responsible is replaced or repaired, FRA 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 FRA 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.**

FRA and all its designees shall have access at all reasonable times to the premises in which any FRA-furnished property is located for the purpose of inspecting the FRA-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, FRA-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 FRA-furnished property or for FRA-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, FRA may initiate an equitable adjustment in favor of FRA. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. FRA shall not be liable to suit for breach of Subcontract for—

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

**17.9 FINAL ACCOUNTING AND DISPOSITION OF FRA-FURNISHED PROPERTY.**

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

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

Unless otherwise provided herein, FRA—

- (a) May abandon any FRA-furnished property in place, at which time all obligations of FRA 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 FRA-furnished property is withdrawn or is unsuitable for the intended use, or if other FRA-furnished property is substituted, then the equitable adjustment under paragraph 17.8 of this clause may properly include restoration and 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 FRA 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 FRA or the Government; and
- (b) That the Subcontractor shall not enter into any contract with a third party which purports to obligate or bind FRA 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 (a) 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 (c), if paragraph (a) 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 \$150,000.)

20.1 Except as provided in paragraph 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 paragraph 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 \$100,000.

## 21. ANTI-KICKBACK PROCEDURES

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

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

- (a) "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, 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" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (c) "Prime Contract" 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" means a person who has entered into a prime contract with the United States.
- (e) "Prime Contractor employee" means any officer, partner, employee, or agent of a prime Contractor.
- (f) "Subcontract" 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"
  - (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" 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 any Federal agency investigating a possible violation described in paragraph 21.2 of this clause.

(c) FRA may—

(i) Offset the amount of the kickback against any monies owed by FRA 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. FRA may direct that monies withheld under subdivision 21.3(c)(i) of this clause be paid over to FRA unless FRA has already offset those monies under subdivision 21.3(c)(ii) of this clause. In either case, the Subcontractor shall notify FRA 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

(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 Act.

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

Sufficient funds required to satisfy any Subcontractor or sub-subcontractor liabilities for unpaid wages and liquidated damages will be withheld from payments due under the Subcontract. If amounts withheld under the Subcontract are insufficient to satisfy Subcontractor or sub-subcontractor liabilities, payments from other Federal or Federally assisted Subcontracts held by the same Subcontractor that are subject to the Contract Work Hours and Safety Standards Act may be withheld.

### 22.5 PAYROLLS AND BASIC RECORDS.

(a) The Subcontractor and its sub-subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the Subcontract during the Subcontract and shall make them available to FRA 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 Davis-Bacon Act.

- (b) The Subcontractor and its sub-subcontractors shall allow authorized representatives of FRA, 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 FRA, 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 exceeding \$100,000 and require sub-subcontractors to include these provisions in any 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** "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.

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

- (b) "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) and 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 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. PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS**

**24.1** Except as provided in paragraph 24.5 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.

**24.2** 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 24.1 above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

- 24.3** (a) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both
- (i) FRA 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 FRA.
- (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; and
    - (I) Total ocean freight revenue in U.S. dollars.

**24.4** The Subcontractor shall insert the substance of this clause, including this paragraph 24.4, in all sub-subcontracts or purchase orders under this Subcontract, except those described in paragraph 24.5(d).

**24.5** The requirement in paragraph 24.1 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 - This Subcontract is -
  - (i) A Subcontract or agreement for ocean transportation services; or

- (ii) A construction Subcontract; or
- (iii) 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.

24.6 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.

**25. PROTECTING FRA AND THE GOVERNMENT'S INTEREST WHEN SUB-SUBCONTRACTING WITH SUB-SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT**

**This clause applies to Subcontracts greater than \$35,000 that are not for commercially available, off-the-shelf items.**

**25.1 DEFINITION. AS USED IN THIS CLAUSE –**

- (a) "Commercially available off-the-shelf (COTS) item,"--
  - (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 FRA, 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
  - (b) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

25.2 The Government suspends or debar Contractors to protect the interests of the Government and FRA. 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 \$35,000 with a sub-subcontractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

25.3 The Subcontractor shall require each proposed sub-subcontractor whose Subcontract will exceed \$35,000, 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.

25.4 A corporate officer or a designee of the Subcontractor shall notify FRA, 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 FRA'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.

**25.5 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 25.5 (appropriately modified for the identification of the parties), in each sub-subcontract that—

- (a) Exceeds \$35,000 in value; and
- (b) Is not a sub-subcontract for commercially available off-the-shelf items.

**26. WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES**

(This clause applies only to work that is performed at the Fermilab site.)

**26.1** 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 regulations at 21 C.F.R. 1308.11 - 1308.15.

**26.2** 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 the 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 FRA within five (5) days of receiving the employee's notice.

**27. PATENT RIGHTS — RETENTION BY THE SUBCONTRACTOR (Short Form)**

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

- (a) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (b) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.
- (c) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (d) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (e) "Small business firm" means a small business concern as defined at section 2 of P.L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and Subcontracting at 13 C.F.R. 121.3-8 and 13 C.F.R. 121.3-12, respectively, will be used.

- (f) "Subject invention" means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of contract performance.
- (g) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 C.F.R. Part 781.

#### 27.2 ALLOCATION OF PRINCIPAL RIGHTS.

The Subcontractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Subcontractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

#### 27.3 INVENTION DISCLOSURE, ELECTION TO TITLE, AND FILING OF PATENT APPLICATION BY SUBCONTRACTOR.

- (a) The Subcontractor will disclose each subject invention to FRA and the Department of Energy (DOE) within 2 months after the inventor disclosed it in writing to Subcontractor personnel responsible for patent matters. The disclosure shall be in the form of a written report and shall identify the Subcontractor under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Subcontractor will promptly notify FRA of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.
- (b) The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE through FRA to a date that is no more than 60 days prior to the end of the statutory period.
- (c) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Subcontractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (d) Requests for extension of the time for disclosure, election, and filing under subparagraphs 27.3(a), (b), and (c) of this clause may, at the discretion of the agency, be granted.

#### 27.4 CONDITIONS WHEN THE GOVERNMENT MAY OBTAIN TITLE.

The Subcontractor will convey to the Federal agency, upon written request, title to any subject invention—

- (a) If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in paragraph 27.3 of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Subcontractor to disclose or elect within the specified.
- (b) In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph 27.3 of this clause; provided, however, that if the Subcontractor has filed a patent application in a country after the times specified in paragraph 27.3 of this clause, but prior to its receipt of the written request of the Federal agency, the Subcontractor shall continue to retain title in that country.
- (c) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

#### 27.5 MINIMUM RIGHTS TO SUBCONTRACTOR AND PROTECTION OF THE SUBCONTRACTOR RIGHT TO FILE.

- (a) The Subcontractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Subcontractor fails to disclose the invention within the times specified in paragraph 27.3 of this clause. The Subcontractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.
- (b) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 C.F.R. Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (c) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable regulations in 37 C.F.R. Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

#### 27.6 SUBCONTRACTOR ACTION TO PROTECT THE GOVERNMENT'S INTEREST.

- (a) The Subcontractor agrees to execute or to have executed and promptly deliver to FRA and DOE all instruments necessary to:
  - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and
  - (ii) Convey title to DOE when requested under paragraph 27.4 of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.
- (b) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under Subcontract in order that the Subcontractor can comply with the disclosure provisions of paragraph 27.3 of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph 27.3(a) of this clause. The Subcontractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (c) The Subcontractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (d) The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the Subcontract) to a prime contractor of the United States Department of Energy. The Government has certain rights in the invention."

#### 27.7 SUB-SUBCONTRACTS.

- (a) The Subcontractor will include this clause, suitably modified to identify the parties, in all sub-subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The sub-subcontractor will retain all rights provided for the Subcontractor in this clause, and

the Subcontractor will not, as part of the consideration for awarding the sub-subcontract, obtain rights in the sub-subcontractor's subject inventions.

- (b) The Subcontractor shall include in all other sub-subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 48 C.F.R. 952.227-13.
- (c) In the case of sub-subcontracts, at any tier, DOE, sub-subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the sub-subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph 27.10 of this clause.

#### **27.8 REPORTING ON UTILIZATION OF SUBJECT INVENTIONS.**

The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Subcontractor, and such other data and information as DOE through FRA may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE through FRA in connection with any march-in proceeding undertaken by that agency in accordance with paragraph 27.10 of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Subcontractor.

#### **27.9 PREFERENCE FOR UNITED STATES INDUSTRY.**

Notwithstanding any other provision of this clause, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in United States. However, in individual cases, the requirement for such an agreement may be waived by DOE through FRA upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

#### **27.10 MARCH-IN RIGHTS.**

The Subcontractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 C.F.R. 401.6 and any supplemental regulations of the agency to require the Subcontractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

- (a) Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees;
- (c) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
- (d) Such action is necessary because the agreement required by paragraph 27.9 of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

#### **27.11 SPECIAL PROVISIONS FOR SUBCONTRACTS WITH NONPROFIT ORGANIZATIONS.**

If the Subcontractor is a nonprofit organization, it agrees that—

- (a) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Subcontractor;
- (b) The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 C.F.R. 401.10;
- (c) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
- (d) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Subcontractor is also satisfied that the small business firm has capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Subcontractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Subcontractor could take reasonable steps to more effectively implement the requirements of this subparagraph 27.11(d).

#### 27.12 COMMUNICATIONS.

- (a) The Subcontractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity (DOE Chicago Operations Office; Argonne, IL 60439), with a copy of the communication to FRA.
- (b) Each exercise of discretion or decision provided for in this clause, except subparagraph 27.11(d), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.
- (c) Upon request of the DOE Patent Counsel or FRA, the Subcontractor shall provide any or all of the following:
  - (i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the Subcontractor has applied for a patent;
  - (ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or
  - (iii) A report, prior to closeout of the Subcontract, listing all subject inventions or stating that there were none.

#### 28. FACILITIES LICENSE

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this Subcontract, the Subcontractor agrees to and does hereby grant to the Government through FRA an irrevocable, non-exclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Subcontractor, which are owned or controlled by the Subcontractor at any time through completion of this Subcontract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility:

- (a) To practice or to have practiced by or for the Government at the facility, and
- (b) To transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

## 29. RIGHTS IN DATA – GENERAL

### 29.1 DEFINITIONS. AS USED IN THIS CLAUSE –

- (a) “Computer databases” means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (b) “Computer software” means:
  - (i) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
  - (ii) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (c) “Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this Subcontract, such as financial, administrative, cost and pricing, or management information.
- (d) “Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (e) “Limited rights data” as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.
- (f) “Restricted computer software” means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software.
- (g) “Restricted rights” means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.
- (h) “Technical data” means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (i) “Unlimited rights” means the rights of FRA to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

### 29.2 ALLOCATION OF RIGHTS.

- (a) Except as provided in paragraph 29.3 below regarding copyright, FRA shall have unlimited rights in:
  - (i) Data first produced in the performance of this Subcontract;
  - (ii) Form, fit, and function data delivered under this Subcontract;
  - (iii) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this Subcontract; and
  - (iv) All other data delivered under this Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph 29.7 below.

- (b) The Subcontractor shall have the right to:
  - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract (except Restricted Data in category C-24, 10 C.F.R. Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology), unless provided otherwise in paragraph 29.4 below;
  - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph 29.7 below;
  - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs 29.5 and 29.6 below; and
  - (iv) Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph 29.3(a) below.

### 29.3 COPYRIGHT (GENERAL).

- (a) **For basic and applied research Subcontracts where software is a specified deliverable (FAR 52.227-14):**  
 Data first produced in the performance of this subcontract. Unless provided otherwise in subparagraph 29.4 below, the Subcontractor may establish, without prior approval of the DOE via FRA, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of DOE via FRA is required to establish claim to copyright subsisting in all other data first produced in the performance of this subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including Department of Energy contract number DE-AC02-07CH11359 with Fermi Research Alliance, LLC) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.
- (b) **For basic or applied research Subcontracts where software is not a specified deliverable (FAR 52.227-14 ALT IV):**  
 Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Subcontractor may assert copyright in any data first produced in the performance of this Subcontract. When asserting copyright, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including Department of Energy contract number DE-AC02-07CH11359 with Fermi Research Alliance, LLC), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.
- (c) Data not first produced in the performance of this Subcontract. The Subcontractor shall not, without prior written permission of the DOE via FRA, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (a) above; provided, however, that if such data are computer software, the Government shall acquire a copyright license if included in this Subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of this Subcontract.
- (d) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph 29.3, and to include such notices on all reproductions of the data.

#### 29.4 RELEASE, PUBLICATION AND USE OF DATA.

- (a) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph or expressly set forth in this Subcontract.
- (b) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract which contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE via FRA.
- (c) The Subcontractor agrees not to assert copyright in computer software first produced in the performance of this Subcontract without prior written permission of the DOE and FRA. When such permission is granted, the DOE through FRA shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to DOE through FRA a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

#### 29.5 UNAUTHORIZED MARKING OF DATA.

- (a) Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with restrictive notices and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this Subcontract, FRA may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
  - (i) FRA shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
  - (ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by FRA for good cause shown), FRA shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
  - (iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (i) above, FRA shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If FRA determines that the markings are authorized, the Subcontractor shall be so notified in writing. If FRA determines that the markings are not authorized, FRA shall furnish the Subcontractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the FRA's decision. FRA shall continue to abide by the markings under this subdivision (iii) until final resolution of the matter either by the FRA's determination becoming final (in which instance FRA shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (b) Except to the extent that an action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by this paragraph 29.5 from bringing a claim, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this Subcontract.

#### 29.6 OMITTED OR INCORRECT MARKINGS.

- (a) Data delivered to FRA without either the limited rights or restricted rights notice as authorized by paragraph 29.7 below, or the copyright notice required by paragraph 29.3 above, shall be deemed to have been furnished with unlimited rights, and FRA assumes no liability for disclosure, use, or reproduction of such data. However, to the extent the data has otherwise not been disclosed without restriction, the Subcontractor may request, within 6 months (or a longer time approved by FRA for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and FRA may agree to do so if the Subcontractor:



- (i) Identifies the data to which the omitted notice is to be applied;
  - (ii) Demonstrates that the omission of the notice was inadvertent;
  - (iii) Establishes that the use of the proposed notice is authorized; and
  - (iv) Acknowledges that neither FRA nor the Government has any liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (b) The DOE, through FRA, may also:
- (i) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or
  - (ii) Correct any incorrect notices.

**29.7 PROTECTION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE.**

When data other than that listed in subparagraphs 29.2(a)(i), (ii), and (iii) above are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them under this Subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery is to be treated as limited rights data and not restricted computer software.

**29.8 SUBCONTRACTING.**

The Subcontractor has the responsibility to obtain from its lower-tier Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations under this Subcontract. If a lower-tier Subcontractor refuses to accept terms affording such rights, the Subcontractor shall promptly bring such refusal to the attention of the DOE via FRA and not proceed with Subcontract award without further authorization.

**29.9 RELATIONSHIP TO PATENTS.**

Nothing contained in this clause shall imply a license to the Government or FRA under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

**29.10** The Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the DOE or FRA or an authorized representative may, up to three years after acceptance of all items to be delivered under this Subcontract, inspect at the Subcontractor's facility any data withheld pursuant to paragraph 29.7 above, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the DOE or FRA that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE or FRA as the case may be shall designate an alternate inspector.

**29.11 SUBCONTRACTOR LICENSING.**

Except as may be otherwise specified in this Subcontract as data not subject to this paragraph, the Subcontractor agrees that upon written application by DOE or FRA, it will grant to the Government, FRA and responsible third parties, for purposes of practicing a subject of this Subcontract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the Subcontractor shall not be obligated to license any such data if the Subcontractor demonstrates to the satisfaction of the Secretary of Energy through FRA:

- (a) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this Subcontract;
- (b) Such data, in the form of results obtained by their use, are being supplied by the Subcontractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the Subcontractor or its licensees have taken

effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

- (c) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the Subcontract results.

### **30. AUTHORIZATION AND CONSENT**

**30.1** The Government authorizes and consents to all use and manufacture, in performing this Subcontract or any lower-tier sub-subcontract, of any invention described in and covered by a United States patent:

- (a) Embodied in the structure or composition of any article the delivery of which is accepted by the Government or FRA under this Subcontract or
- (b) Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or any lower-tier sub-subcontractor with:
  - (i) Specifications or written provisions forming a part of this Subcontract or
  - (ii) Specific written instructions given by FRA or the Department Contracting Officer 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 clause, if any, included in this Subcontract or any lower-tier sub-subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**30.2** The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all lower-tier sub-subcontracts for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold at Federal Acquisition Regulation (FAR) 2.101); however, omission of this clause from any lower-tier sub-subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

### **31. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

**31.1** The Subcontractor shall report to the Department Contracting Officer through FRA promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.

**31.2** In the event of any claim or suit against FRA or the Government on account of any patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to FRA, when requested by FRA or the Department Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government or FRA.

**31.3** The Subcontractor agrees to include, and require inclusion of this clause in all lower-tier sub-subcontracts for supplies or services (including construction and architect-engineer sub-subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

### **32. REFUND OF ROYALTIES**

**32.1** This clause applies only if the Subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier sub-subcontractors or both which amounts have been reported to FRA.

**32.2** The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this Subcontract or any lower-tier Subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

32.3 The Subcontractor shall furnish to FRA or the DOE Contracting Officer (if directed by FRA), before final payment under this Subcontract, a statement of royalties paid or required to be paid in connection with performing this Subcontract and lower-tier Subcontracts hereunder together with the reasons.

32.4 The Subcontractor will be compensated for royalties reported under paragraph 32.3 of this clause, only to the extent that such royalties were included in the Subcontract price and are determined by FRA to be properly chargeable to the Government and allocable to the Subcontract. To the extent that any royalties that are included in the Subcontract price are not, in fact, paid by the Subcontractor or are determined by FRA not to be properly chargeable to the Government and allocable to the Subcontract, the Subcontract price shall be reduced. Repayment or credit to FRA shall be made as FRA or as DOE Contracting Officer directs. The approval by FRA of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

32.5 If, at any time within 3 years after final payment under this Subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final Subcontract price as adjusted pursuant to paragraph 32.4 of this clause, the Subcontractor shall promptly notify FRA or the DOE Contracting Officer of that fact and shall reimburse FRA or the Government in a corresponding amount.

32.6 The substance of this clause, including this paragraph 32.6, shall be included in any sub-subcontract in which the amount of royalties reported during negotiation of the sub-subcontract exceeds \$250.

### 32A. ADDITIONAL DATA REQUIREMENTS.

32A.1 In addition to the data (as defined in clause 29, Rights in Data – General, or other equivalent included in this Subcontract) specified elsewhere in this Subcontract to be delivered, the DOE Contracting Officer, through FRA, may, at any time during Subcontract performance or within a period of 3 years after acceptance of all items to be delivered under this Subcontract, order any data first produced or specifically used in the performance of this Subcontract.

32A.2 The Rights in Data – General clause or other equivalent included in this Subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data – General or other equivalent clause of this Subcontract, or data which are specifically identified in this Subcontract as not subject to this clause.

32A.3 When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

32A.4 The DOE Contracting Officer, through FRA, may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph 32A.1 of this clause.

### 32B. RIGHTS TO PROPOSAL DATA (TECHNICAL)

Except for data contained on pages \_\_\_\_\_, it is agreed that as a condition of award of this Subcontract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data – General” clause contained in this Subcontract) in and to the technical data contained in the proposal dated \_\_\_\_\_, upon which this Subcontract is based.

### 33. WORKMANSHIP AND SAFETY

All work under this Subcontract shall be performed in a skillful, safe, and workmanlike manner.

### 34. TERMINATION FOR THE CONVENIENCE OF FRA

34.1 FRA may terminate performance of work under this Subcontract in whole or, from time to time, in part if FRA determines that a termination is in FRA’s interest. FRA shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

34.2 After receipt of a Notice of Termination and except as directed by FRA, the Subcontractor shall immediately proceed with the following obligations:

- (a) Stop work as specified in the Notice;

- (b) Place no further sub-subcontracts (including purchase orders), except as necessary to complete the continued portion of the Subcontract;
- (c) Terminate all applicable sub-subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination;
- (d) Assign to the U.S. Government, as directed by FRA, all right, title, and interest of the Subcontractor under the sub-subcontracts terminated, in which case FRA and the U.S. Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations;
- (e) With approval or ratification to the extent required by FRA, settle all outstanding liabilities and termination settlement proposals arising from the termination of sub-subcontracts;
- (f) Transfer title (if not already transferred) and, as directed by FRA, deliver to the U.S. Government via FRA any information and items that, if the Subcontract had been completed, would have been required to be furnished, including:
  - (i) Materials or equipment produced, in process, or acquired for the work terminated and
  - (ii) Completed or partially completed plans, drawings, and information;
- (g) Complete performance of the work not terminated;
- (h) Take any action that may be necessary, or that FRA may direct, for the protection and preservation of property related to this Subcontract that is in the possession of the Subcontractor and in which the U.S. Government has or may acquire an interest; and
- (i) Use its best efforts to sell, as directed or authorized by FRA, termination inventory other than that retained by the U.S. Government under subparagraph (f) above. (NOTE: The Subcontractor is not required to extend credit to any purchaser and may acquire the property under conditions prescribed by, and at prices approved by, FRA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by FRA under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by FRA.)

**34.3** After termination, the Subcontractor shall submit a final termination settlement proposal to FRA in the form and with the certification prescribed by FRA. The Subcontractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by FRA upon written request of the Subcontractor within this 1-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, FRA may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

**34.4** Subject to paragraph 34.3 above, the Subcontractor and FRA may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel; provided, that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The Subcontract shall be amended and the Subcontractor paid the agreed amount.

**34.5** The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the Subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution, and is a non-profit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principles shall apply; provided, that if the Subcontractor is a non-profit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Subcontractor.

### **35. PERMITS**

Except as otherwise directed by FRA, the Subcontractor shall, without any additional expense to FRA, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and local laws, codes or regulations, or with directives and procedures issued by FRA in connection with the prosecution of work.

**36. HAZARDOUS WASTE DISPOSAL**

The Subcontractor shall comply with all applicable Federal, state and local laws and regulations governing the transport, storage, treatment, and disposal of regulated waste materials included in or generated during the performance of this Subcontract.

**37. ENVIRONMENT, SAFETY AND HEALTH**

The Subcontractor shall take all reasonable precautions in the performance of work under this Subcontract to protect the environment and the safety and health of employees and members of the public. The Subcontractor shall comply with all applicable environmental, safety and health laws, regulations and other requirements, including reporting requirements. In the event that the Subcontractor fails to comply with said laws, regulations or requirements, FRA may without prejudice to any other legal or contractual rights, issue an order stopping all or part of the work. Thereafter, a start order for resumption of the work may be issued at FRA's discretion. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

**38. BUY AMERICAN ACT – SUPPLIES**

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

- (a) "Commercially available off-the-shelf (COTS) item" —
  - (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 FRA, under a contract or 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.
- (b) "Component" means an article, material, or supply incorporated directly into an end product.
- (c) "Cost of components" means—
  - (i) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
  - (ii) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph 38.1(c)(i) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- (d) "Domestic end product" means—
  - (i) An unmanufactured end product mined or produced in the United States;
  - (ii) An end product manufactured in the United States, if—
    - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
    - (B) The end product is a COTS item.

- (e) "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- (f) "Foreign end product" means an end product other than a domestic end product.
- (g) "United States" means the 50 States, the District of Columbia, and outlying areas.

**38.2** 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

**38.3** Offerors may obtain from the Procurement Administrator a list of foreign articles that the Procurement Administrator will treat as domestic for this contract.

**38.4** The Subcontractor shall use only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

### **39. INSPECTION OF RESEARCH AND DEVELOPMENT**

FRA has the right to inspect and evaluate the work performed under this Subcontract, and the premises where work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If FRA performs inspection or evaluation on the premises of the Subcontractor or a sub-subcontractor, the Subcontractor shall furnish and shall require sub-subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

### **40. PRICING OF ADJUSTMENTS**

When costs are a factor in any determination of a price adjustment pursuant to the "Changes" clause or any other provision of this Subcontract, such costs shall be in accordance with the cost principles and procedures in Federal Acquisition Regulation (FAR) Subpart 31 and Department of Energy Acquisition Regulations (DEAR) Subpart 931.

### **41. CHANGES**

**41.1** FRA may at any time, by written order, and without notice to sureties, make changes within the general scope of this Subcontract in any one or more of the following:

- (a) Drawings, designs, or specifications;
- (b) Method of shipment or packing; and
- (c) Place of inspection, delivery, or acceptance.

**41.2** If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Subcontract, whether or not changed by the order, FRA shall make an equitable adjustment in the Subcontract price, the delivery schedule, or both, and shall modify the Subcontract.

**41.3** The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if FRA decides that the facts justify it, FRA may receive and act upon a proposal submitted before final payment under the Subcontract.

**41.4** If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, FRA shall have the right to prescribe the manner of disposition of the property.

**41.5** Failure to agree with any adjustment shall not excuse the Subcontractor from proceeding with the Subcontract as changed.

### **42. INSURANCE**

In the event that the Subcontractor's employees perform work under this Subcontract on the Fermilab site, it shall be the responsibility of the Subcontractor to:

- (a) Maintain Workmen's Compensation coverage for such employees in amounts required by the applicable state law while they are working at Fermilab, and

- (b) Assure that vehicles which may be brought onto the Fermilab site by such employees are covered by automobile liability insurance in amounts no less than the minimums set forth in FAR 28.307-2(c) (i.e., \$200,000 per person, \$500,000 per occurrence for bodily injury, and \$20,000 per occurrence for property damage). The requirement or individual limits set forth in (b) may be reduced or waived (e.g., where the Subcontractor operates under a self-insurance program acceptable to FRA), but only with the prior approval of the FRA manager.

**43. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

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

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

- (a) "Agency," means executive agency as defined in FAR 2.101.
- (b) "Covered Federal action," 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" 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," 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," 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," 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" 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" 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" 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" 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" 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" 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.

#### 43.2 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 43.2(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 43.2(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 43.2(c)(i)(A) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- (A) The prohibition on the use of appropriated funds, in subparagraph 43.2(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 person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
    - (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 43.2(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 43.2(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.

#### 43.3 DISCLOSURE.

- (a) The Subcontractor who requests or receives from FRA a Federal Subcontract shall file with FRA 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 43.2(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 43.3(a) of this clause. An event that materially affects the accuracy of the information reported 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.
- (c) 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 \$150,000 under the Federal Subcontract.
- (d) All sub-subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by FRA. FRA 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.

#### 43.4 AGREEMENT.

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

#### 43.5 PENALTIES.

- (a) Any person who makes an expenditure prohibited under paragraph 43.2 of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph 43.3 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 FRA 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.

#### 43.6 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.

#### 44. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

44.1 Unless advanced authorization has been obtained by FRA from the Office of Foreign Assets Control (OFAC), in the Department of the Treasury, the Contractor 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 regulation at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

44.2 Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from 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>.

44.3 The Subcontractor shall insert this clause, including this paragraph in all sub-subcontracts

#### 45. PROHIBITION OF SEGREGATED FACILITIES

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

- (a) "Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).
- (b) "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, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (c) "Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

45.2 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.

45.3 The Subcontractor shall include this clause in every sub-subcontract and purchase order that is subject to the Equal Opportunity clause of this Subcontract.

#### 46. SENSITIVE FOREIGN NATIONS CONTROLS

46.1 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 FRA 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 FRA shall apply.

46.2 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.

#### 47. DISPLACED EMPLOYEE HIRING PREFERENCE

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

##### 47.1 DEFINITION. AS USED IN THIS CLAUSE—

- (a) "Eligible employee" means a current or former employee of a contractor or Subcontractor employed at a Department of Energy Defense Nuclear Facility
  - (i) Whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),
  - (ii) 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

- (iii) 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.

47.2 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.

47.3 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.

#### 48. RESEARCH MISCONDUCT

48.1 The Subcontractor is responsible for maintaining the integrity of research performed pursuant to this Subcontract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

48.2 Unless otherwise instructed by FRA, the Subcontractor must conduct an initial inquiry into any allegation of research misconduct. If the Subcontractor determines that there is sufficient evidence to proceed to an investigation, it must notify FRA and, unless otherwise instructed, the Subcontractor must:

- (a) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;
- (b) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
- (c) Inform FRA if an initial inquiry supports a formal investigation and, if requested by FRA thereafter, keep FRA informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Subcontractor will forward to FRA a copy of the evidentiary record, the investigative report, any recommendations made to the Subcontractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

48.3 FRA or DOE may elect to act in lieu of the Subcontractor in conducting an inquiry or investigation into an allegation of research misconduct if FRA or DOE finds that:

- (a) The research organization is not prepared to handle the allegation in a manner consistent with this clause;
- (b) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;
- (c) FRA or DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest or,
- (d) The allegation involves possible criminal misconduct.

48.4 In conducting the activities under paragraphs 48.2 and 48.3 of this clause, the Subcontractor and FRA or DOE, if FRA or DOE elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

- (a) Safeguards for information and subjects of allegations. The Subcontractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Subcontractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(b) OBJECTIVITY AND EXPERTISE.

The Subcontractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(c) TIMELINESS.

The Subcontractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(d) CONFIDENTIALITY.

To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(e) REMEDIATION AND SANCTION.

If the Subcontractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The Subcontractor must take all necessary corrective actions. Such actions may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Subcontractor must coordinate remedial actions with FRA. The Subcontractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

**48.5** FRA reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Subcontractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If FRA pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

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

- (a) "Adjudication" means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.
- (b) "Fabrication" means making up data or results and recording or reporting them.
- (c) "Falsification" means manipulating research material, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- (d) "Finding of Research Misconduct" means a determination, based on a preponderance of the evidence that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.
- (e) "Inquiry" means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.
- (f) "Investigation" means the formal examination and evaluation of the relevant facts.
- (g) "Plagiarism" means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

- (h) "Research" means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.
- (i) "Research Misconduct" means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error of differences of opinion.
- (j) "Research Record" means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

48.7 By executing this Subcontract, the Subcontractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR Part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

48.8 The Subcontractor must insert or have inserted the substance of this clause, including paragraph 48.7, in sub-subcontracts at all tiers that involve research.

#### 49. PERSONAL IDENTITY VERIFICATION OF SUBCONTRACTOR PERSONNEL

**This clause applies where Subcontractor employees are required to have routine physical access to the Fermilab site and/or routine access to a federally controlled information system.**

49.1 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.

49.2 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 FRA;

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

49.3 FRA may delay final payment under a contract if the sub-subcontractor fails to comply with these requirements.

49.4 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 FRA.

#### 50. 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 this Subcontract. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event that ADR fails or is not used, the parties thereafter may pursue any remedy they may have at law or in equity.

#### 51. SUBCONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

**This clause applies to Subcontracts that have value in excess of \$5,500,000 and a performance period of more than 120 days.**

##### 51.1 DEFINITION. AS USED IN THIS CLAUSE—

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

**51.2 Code of business ethics and conduct.**

- (a) Within 30 days after Subcontract award, unless FRA establishes a longer time period, the Subcontractor shall—
  - (i) Have a written code of business ethics and conduct; and
  - (ii) Provide a copy of the code to each employee engaged in performance of the Subcontract.
- (b) The Subcontractor shall promote compliance with its code of business ethics and conduct.

**51.3 Awareness program and internal control system for other than small businesses.** This paragraph (51.3) does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this Subcontract. The Subcontractor shall establish within 90 days after Subcontract award, unless FRA establishes a longer time period—

- (a) An ongoing business ethics and business conduct awareness program; and
- (b) An internal control system.
  - (i) The Subcontractor's internal control system shall—
    - (A) Facilitate timely discovery of improper conduct in connection with FRA or Government contracts; and
    - (B) Ensure corrective measures are promptly instituted and carried out.
  - (ii) For example, the Subcontractor's internal control system should provide for—
    - (A) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Subcontractor's code of business ethics and conduct and the special requirements of FRA and Government contracting;
    - (B) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
    - (C) Internal and/or external audits, as appropriate; and
    - (D) Disciplinary action for improper conduct.

**51.4 SUB-SUBCONTRACTS.**

- (a) The Subcontractor shall include the substance of this clause, including this paragraph (51.4), in sub-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.

**52. COMBATING TRAFFICKING IN PERSONS**

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

- (a) "Commercially available off-the-shelf (COTS) item" means—
  - (i) 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 the Government, under a contract or Subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

- (ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- (b) “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.
- (c) “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.
- (d) “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.
- (e) “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.
- (f) “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.
- (g) “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.
- (h) “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.
- (i) “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
- (j) “Sub-subcontract” means any contract entered into by a sub-subcontractor to furnish supplies or services for performance of a Subcontract or a sub-subcontract.
- (k) “Sub-subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a Subcontractor or another Subcontractor.
- (l) “United States” means the 50 States, the District of Columbia, and outlying areas.

## 52.2 POLICY.



The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Subcontractors, Subcontractor employees, and their agents shall not—

- (a) Engage in severe forms of trafficking in persons during the period of performance of the Subcontract;
- (b) Procure commercial sex acts during the period of performance of the Subcontract;
- (c) Use forced labor in the performance of the Subcontract; or
- (d) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identify or immigration documents, such as passports or drivers' licenses, regardless of the issuing authority;
- (e)
  - (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;
  - (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (f) Charge employees recruitment fees;
- (g)
  - (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment —
    - (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or Subcontract (for portions of contracts performed outside the United States); or
    - (B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or Subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that—
  - (ii) The requirements of paragraphs 52.2(g)(i) of this clause shall not apply to an employee who is —
    - (A) Legally permitted to remain in the country of employment and who chooses to do so; or
    - (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;
  - (iii) The requirements of paragraph 52.2(g)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph 52.2(g)(ii) of this clause apply.
- (h) Provide or arrange housing that fails to meet the host country housing and safety standards; or
- (i) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

### 52.3 SUBCONTRACTOR REQUIREMENTS.

The Subcontractor shall—

- (a) Notify its employees and agents of—
  - (i) FRA and the United States Government's policy prohibiting trafficking in persons, described in paragraph 52.2 of this clause; and
  - (ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the Subcontract, reduction in benefits, or termination of employment; and
- (b) Take appropriate action, up to and including termination, against employees, agents, or Subcontractors that violate the policy in paragraph 52.2 of this clause.

#### 52.4 NOTIFICATION.

- (a) The Subcontractor shall inform FRA immediately of—
  - (i) Any credible information it receives from any source (including host country law enforcement) that alleges a Subcontractor employee, Subcontractor, or sub-subcontractor employee or their agent has engaged in conduct that violates the policy in paragraph 52.2 of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and
  - (ii) Any actions taken against a Subcontractor employee, sub-subcontractor, or sub-subcontractor employee, or their agent pursuant to this clause.
- (b) If the allegation may be associated with more than one contract, the Subcontractor shall inform FRA of the contract with the highest dollar value.

#### 52.5 REMEDIES.

In addition to other remedies available to FRA or the Government, the Subcontractor's failure to comply with the requirements of paragraphs 52.3, 52.4, 52.7, 52.8 or 52.9 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 until the Subcontractor has taken appropriate remedial action;
- (d) Loss of award fee, consistent with the award fee plan, for the performance period in which FRA or the Government determined Subcontractor non-compliance;
- (e) Declining to exercise available options under this Subcontract;
- (f) Termination of the Subcontract for default or cause, in accordance with the termination clause of this Subcontract; or
- (g) Suspension or debarment.

#### 52.6 MITIGATING AND AGGRAVATING FACTORS.

- (a) When determining remedies, FRA may consider the following:
  - (i) Mitigating factors. The Subcontractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

- (ii) Aggravating factors. The Subcontractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by FRA or the Government to do so.

#### 52.7 FULL COOPERATION.

- (a) The Subcontractor shall, at a minimum—
  - (i) Disclose to FRA and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
  - (ii) Provide timely and complete responses to FRA and Government auditors' and investigators' requests for documents;
  - (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
  - (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with FRA or Government authorities.
- (b) The requirement for full cooperation does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the Subcontract. It does not—
  - (i) Require the Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
  - (ii) Require any officer, director, owner, employee, or agent of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
  - (iii) Restrict the Subcontractor from—
    - (A) Conducting an internal investigation; or
    - (B) Defending a proceeding or dispute arising under the Subcontract or related to a potential or disclosed violation.

#### 52.8 COMPLIANCE PLAN.

- (a) This paragraph 52.8 applies to any portion of the Subcontract that—
  - (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
  - (ii) Has an estimated value that exceeds \$500,000.
- (b) The Subcontractor shall maintain a compliance plan during the performance of the Subcontract that is appropriate—
  - (i) To the size and complexity of the Subcontract; and
  - (ii) To the nature and scope of the activities to be performed for FRA, including the number of non-United States citizens expected to be employed and the risk that the Subcontract or sub-subcontract will involve services or supplies susceptible to trafficking in persons.
- (c) MINIMUM REQUIREMENTS. The compliance plan must include, at a minimum, the following:

- (i) An awareness program to inform Subcontractor employees about FRA and the Government's policy prohibiting trafficking-related activities described in paragraph 52.2 of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tipl/>.
  - (ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).
  - (iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
  - (iv) A housing plan, if the Subcontractor or sub-subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
  - (v) Procedures to prevent agents and Subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph 52.2 of this clause) and to monitor, detect, and terminate any agents, sub-subcontracts, or sub-subcontractor employees that have engaged in such activities.
- (d) POSTING.
- (i) The Subcontractor shall post the relevant contents of the compliance plan, no later than the initiation of Subcontract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Subcontractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Subcontractor shall provide the relevant contents of the compliance plan to each worker in writing.
  - (ii) The Subcontractor shall provide the compliance plan to FRA upon request.
- (e) CERTIFICATION. Annually after receiving an award, the Subcontractor shall submit a certification to FRA that—
- (i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph 52.2 of this clause and to monitor, detect, and terminate any agent, Subcontract or Subcontractor employee engaging in prohibited activities; and
  - (ii) After having conducted due diligence, either—
    - (A) To the best of the Subcontractor's knowledge and belief, neither it nor any of its agents, sub-subcontractors, or their agents is engaged in any such activities; or
    - (B) If abuses relating to any of the prohibited activities identified in paragraph 52.2 of this clause have been found, the Subcontractor or sub-subcontractor has taken the appropriate remedial and referral actions.

#### 52.9 SUBCONTRACTS.

- (a) The Subcontractor shall include the substance of this clause, including this paragraph 52.9, in all sub-subcontracts and in all contracts with agents. The requirements in paragraph 52.8 of this clause apply only to any portion of the sub-subcontract that—
  - (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
  - (ii) Has an estimated value that exceeds \$500,000.
- (b) If any sub-subcontractor is required by this clause to submit a certification, the Subcontractor shall require submission prior to the award of the sub-subcontract and annually thereafter. The certification shall cover the items in paragraph 52.8(e) this clause.

**53. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS**

**53.1 DEFINITION. 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.
  - (ii) 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](#)).

**53.2 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 FRA or the Government; or
- (d) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

**53.3 The requirements of paragraph 53.2 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 FRA.

**53.4 Information about these products is available for –**

- (a) ENERGY STAR® at <http://www.energystar.gov/products>; and
- (b) FEMP at [http://www1.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

**54. PERSONALLY IDENTIFIABLE INFORMATION.**

**54.1 DEFINITION. AS USED IN THIS CLAUSE –**

As used throughout this Subcontract, the term “Personally Identifiable Information” shall mean any information collected or maintained by FRA, on behalf of the Department of Energy, about an individual, including but not limited to, education, financial transactions, medical history and criminal or employment history, and information that can be used to distinguish or trace an individual’s identity, such as his/her name, Social Security number, date and place of birth, mother’s maiden name, biometric data, and including any other personal information that is linked or linkable to a specific individual.

**54.2 GENERAL REQUIREMENTS.**

- (a) Subcontractor must ensure compliance with privacy requirements, specifically those provided in the Privacy Act of 1974, as amended at Title 5 United States Code (U.S.C.) 552a, and take appropriate actions to assist FRA in complying with Section 208 of the E-Government Act of 2002, and Office of Management and Budget (OMB) directives.
- (b) Subcontractor must ensure that its employees are aware of their responsibility for safeguarding Personally Identifiable Information (PII) and complying with the Privacy Act.

**54.3 SPECIFIC REQUIREMENTS.**

- (a) Subcontractor must ensure its employees are made aware of their roles and responsibilities for reporting suspected or confirmed incidents involving the breach of PII.
- (b) Subcontractor must ensure its employees are cognizant of the following DOE Privacy Rules of Conduct. At a minimum, Subcontractor must ensure that its employees—
  - (i) Are trained in their responsibilities regarding the safeguarding of PII;
  - (ii) Do not disclose any PII contained in any system of records (SOR) except as authorized;
  - (iii) Report any known or suspected loss of control or unauthorized disclosure of PII;
  - (iv) Observe the requirements of DOE directives concerning marking and safeguarding sensitive information, including, when applicable, DOE O 471.3, Protecting and Identifying Official Use Only Information;
  - (v) Collect only the minimum PII necessary for the proper performance of a documented agency function;
  - (vi) Do not place PII on shared drives, intranets or websites without permission of the System Owner; and
  - (vii) Challenge anyone who asks to see the PII for which they are responsible.
- (c) Subcontractor must ensure that its employees complete the Annual Privacy Training and sign the completion certificate acknowledging their responsibility for maintaining and protecting Privacy Act information prior to being authorized access to all information systems.
- (d) Subcontractor must ensure that its employees are cognizant of the fact that all personal information collected, maintained, used, or disseminated on behalf of the Agency must be maintained in a Privacy Act SOR.
- (e) Subcontractor must ensure that its employees recognize differences between PII and the Privacy Act and the different obligations created by both authorities. Most personal information about an individual will fall under both the Privacy Act and OMB directives governing the safeguarding of PII. However, contractors must be cognizant that these are two separate authorities that impose different responsibilities on federal and contractor employees for safeguarding information. PII that is in a SOR is subject to the restrictions and penalties of the Privacy Act.
- (f) Subcontractor must ensure that its employees are cognizant of the fact that non-compliance with the Privacy Act carries criminal and civil penalties.

#### 54.4 MANDATORY FLOWDOWN.

The Subcontractor shall insert this clause in all sub-subcontracts when the sub-subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

#### 55. EMPLOYMENT ELIGIBILITY VERIFICATION

**This clause applies to Subcontracts with a value more than \$3,500 and that meet the other conditions described in paragraph 55.5.**

##### 55.1 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 in FAR 2.101);
    - (B) Sold in substantial quantities in the commercial marketplace; and
    - (C) Offered to the Government, 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 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.

## 55.2 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; 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 55.2(c) of this section); and
  - (ii) 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 55.2(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 55.2(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 55.2(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 55.2(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 contract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at 55.2(a) or 55.2(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 55.2 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.

### 55.3 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>.

### 55.4 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.

### 55.5 SUB-SUBCONTRACTS.

The Subcontractor shall include the requirements of this clause, including this paragraph (55.5) (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 \$3,500; and
- (c) Includes work performed in the United States.

#### 56. INTEGRITY OF UNIT PRICES

- 56.1 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.
- 56.2 When requested by the FRA, the Offeror/Subcontractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.
- 56.3 The Subcontractor shall insert the substance of this clause, less paragraph 56.2, 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.

#### 57. NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

- 57.1 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 57.2 (c) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."
- 57.2 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.
- 57.3 The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.
- 57.4 The Subcontractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

57.5 In the event that the Subcontractor does not comply with the requirements set forth in 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.

57.6 SUB-SUBCONTRACTS.

- (a) The Subcontractor shall include the substance of this clause, including this paragraph 57.6, 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.

58. SUBCONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING

58.1 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.

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

58.3 The Subcontractor is encouraged to—

- (a) Adopt and enforce policies that ban text messaging while driving—
  - (i) Company-owned or -rented vehicles, Government-owned vehicles, or FRA-owned vehicles; or
  - (ii) Privately-owned vehicles when on official Government or FRA business or when performing any work for or on behalf of the Government or FRA.
- (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.

#### 58.4 SUB-SUBCONTRACTS.

The Subcontractor shall insert the substance of this clause, including this paragraph 58.4, in all sub-subcontracts that exceed the micro-purchase threshold.

#### 59. DISPLAY OF HOTLINE POSTER(S)

**This clause applies to Subcontracts that have value in excess of \$5,500,000, unless for the acquisition of commercial items or performed entirely outside the United States.**

##### 59.1 DEFINITION. AS USED IN THIS CLAUSE—

- (a) “United States” means the 50 States, the District of Columbia, and outlying areas.

##### 59.2 DISPLAY OF FRAUD HOTLINE POSTER(S).

Except as provided in paragraph (59.3)—

- (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 as found in (c) of this clause; and
  - (ii) Any DHS fraud hotline poster subsequently identified by FRA.
- (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. Poster(s) Obtain from Hotline Poster <http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>

59.3 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 (59.2) of this clause, other than any required DHS posters.

#### 59.4 SUB-SUBCONTRACTS.

The Subcontractor shall include the substance of this clause in all sub-subcontracts that exceed \$5,500,000, except when the Subcontract—

- (a) Is for the acquisition of a commercial item; or
- (b) Is performed entirely outside the United States.

#### 60. DUTY-FREE ENTRY

##### 60.1 DEFINITION. AS USED IN THIS CLAUSE—

- (a) “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

60.2 Except as otherwise approved by FRA, 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.

60.3 The following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

- (a) The Subcontractor shall notify FRA 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 FRA 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) FRA 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 FRA, 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.
- 60.4** The Subcontractor is not required to provide the notification required under 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 FRA Subcontracts containing duty-free entry provisions is not economical or feasible.
- 60.5** The Subcontractor shall claim duty-free entry only for supplies to be delivered to the FRA 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 FRA, diverted to nongovernmental use.
- 60.6** FRA 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.
- 60.7** Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to FRA in care of the Subcontractor and shall include the—
- (a) Delivery address of the Subcontractor or FRA where appropriate;
  - (b) FRA Subcontract number;
  - (c) Identification of carrier;
  - (d) Notation "UNITED STATES GOVERNMENT, FRA, 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.
- 60.8** 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 FRA; 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.
- 60.9** The Subcontractor shall provide written notice to FRA immediately after notification by FRA 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).

**60.10** 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.

## **61. COMPUTER SECURITY**

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

- (a) “Computer” means desktop computers, portable computers, computer networks (including the DOE/FRA Network and local area networks at or controlled by DOE/FRA organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE or FRA.
- (b) “Individual” means a DOE, FRA, or Subcontractor employee, or any other person who has been granted access to a DOE/FRA computer or to information on a DOE/FRA computer, and does not include a member of the public who sends an e-mail message to a DOE/FRA computer or who obtains information available to the public on DOE/FRA Web sites.

**61.2** ACCESS TO DOE/FRA COMPUTERS.

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

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

**61.3** NO EXPECTATION OF 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/FRA computer shall have any expectation of privacy in the use of that computer.

**61.4** WRITTEN RECORDS.

The Subcontractor is responsible for maintaining written records for itself and Subcontractors demonstrating compliance with the provisions of this section. The Subcontractor agrees to provide access to these records to FRA, or its authorized agents, upon request.

**61.5** SUB-SUBCONTRACTS.

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

## 62. SUSTAINABLE ACQUISITION.

**62.1** 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.

**62.2** Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, FRA 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 FRA employees, Subcontract service providers and visitors using Fermilab.

**62.3** Green purchasing or sustainable acquisition has several interacting initiatives. The Subcontractor must comply with initiatives that are current as of the contract award date. FRA 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>.

**62.4** 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.

**62.5** 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>.

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

62.7 The Subcontractor shall prepare and submit performance reports using prescribed FRA 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)).

62.8 The Subcontractor will comply with the procedures in paragraphs 62.4 through 62.6 of this clause regarding the collection of all data necessary to generate the reports required under paragraphs 62.4 through 62.6 of this clause, and submit the reports directly to the ES&H Section at FRA. The Subcontractor will advise FRA if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph 62.4 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.

62.9 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>

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

### 63. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLE BLOWER RIGHTS

**This clause applies to Subcontracts that exceed the Simplified Acquisition Threshold (SAT) of the FAR.**

63.1 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.

63.2 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.

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

### 64. REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

**Applies to Subcontracts as indicated below.**

**64.1 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.

**64.2 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.

**64.3 DISCLOSURE OF CLASSIFIED INFORMATION.**

Nothing in this clause requires the disclosure of classified information.

**64.4 FIRST-TIER SUBCONTRACT INFORMATION.**

Unless otherwise directed by the procurement officer, or as provided in paragraph 64.6 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).

**64.5 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/excomp.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.frs.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/excomp.htm>.)

**64.6** 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 64.4.

**64.7** FRA is required to report information on a first-tier Subcontract covered by paragraph 64.4 when the Subcontract is awarded. Continued reporting on the same Subcontract is not required unless one of the reported data elements changes during the performance of the Subcontract. FRA is not required to make further reports after the first-tier Subcontract expires.

**64.8** 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.

**64.9** 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.

## **65. COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION**

**65.1** Unless this Subcontract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Subcontractor, in connection with this contract, shall—

- (a) (CAS-covered Contracts Only). If a business unit of an educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A and [20 U.S.C. 1001](#)) is required to submit 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 accumulating and allocating indirect costs. The practices disclosed for this Subcontract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified FRA 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 FRA or the Government.
- (b) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this Subcontract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, requires that a change in the Subcontractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this Subcontract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this Subcontract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.
- (c) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract 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.
- (d)(i) Agree to an equitable adjustment as provided in the Changes clause of this Subcontract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.
  - (ii) Negotiate with FRA 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 paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by FRA.

- (iii) When the parties agree to a change to a cost accounting practice, other than a change under sub-division (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this Subcontract.
- (iv) Agree to an equitable adjustment as provided in the Changes clause of this Subcontract, if the contract cost is materially affected by an accounting principle amendment required under the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, which, on becoming effective after the date of contract award, requires the Subcontractor to make a change to the Subcontractor's established cost accounting practices.

(e) Agree to an adjustment of the Subcontract price or cost allowance, as appropriate, if the Subcontractor or a 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 FRA. Such adjustment shall provide for recovery of the increased costs to FRA, 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 FRA was made to the time the adjustment is effected. In no case shall FRA recover costs greater than the increased cost to FRA, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Subcontractor made a change in its 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 FRA.

**65.2** If the parties fail to agree whether the Subcontractor or a sub-subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by FRA, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

**65.3** The Subcontractor shall permit any authorized representatives of FRA to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

**65.4** The Subcontractor shall include in all negotiated sub-subcontracts which the Subcontractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other sub-subcontracts, of any tier, including the obligation to comply with all applicable 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, except that—

- (a) 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 48 CFR 9903.201-4 shall be inserted;
- (b) This requirement shall apply only to negotiated sub-subcontracts in excess of \$750,000; and
- (c) The requirement shall not apply to negotiated sub-subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

## **66. NONDISPLACEMENT OF QUALIFIED WORKERS**

This clause applies to services that exceed the Simplified Acquisition Threshold (SAT) of the FAR.

### **66.1. DEFINITION. AS USED IN THIS CLAUSE—**

- (a) "Service employee" 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.

**66.2** 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 66.3 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).
- 66.3 (a)** Notwithstanding the obligation under paragraph 66.2 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.
- 66.4 (a)** The Subcontractor shall, not less than 30 days before completion of the Subcontractor's performance of services on the Subcontract, furnish FRA 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 66.5 of this clause, not less than 10 days before completion of the services on this Subcontract, furnish FRA 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, FRA 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) FRA 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.
- 66.5** (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 FRA 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, FRA 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.
- 66.6** 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.
- 66.7** 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. FRA 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).
- 66.8** 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.

- 66.9 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.
- 66.10 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 FRA and the United States, through FRA and the Secretary, enter into such litigation to protect the interests of FRA and the United States.
- 66.11 FRA 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 FRA 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 FRA 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, FRA 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 FRA.

**66.12 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 66.2 through 66.3 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 66.4 and 66.5 of this clause; and
- (c) The recordkeeping requirements of paragraph 66.6 of this clause.

**67. ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS**

**67.1 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.

**67.2 The Subcontractor, on completion of this contract, shall—**

- (a) 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
- (b) 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 67.2 of the basic clause as paragraph 67.3 and add the following paragraph 67.2 to the basic clause:

**67.2 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)

**68. STOP WORK ORDER**

FRA may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this Subcontract contract for a period of 90 days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, FRA shall either—

(a) Cancel the stop-work order; or

(b) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of FRA, clause of this contract.

If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. FRA shall make an equitable adjustment in the delivery schedule or Subcontract price, or both, and the Subcontract shall be modified, in writing, accordingly, if—

(a) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this Subcontract; and

(b) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if FRA decides the facts justify the action, FRA may receive and act upon the claim submitted at any time before final payment under this Subcontract.

If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of FRA, FRA shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

If a stop-work order is not canceled and the work covered by the order is terminated for default, FRA shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**69. FERMILAB SITE AND FACILITIES ACCESS REQUIREMENTS**

FRA must comply with DOE Order 142.3A regarding Unclassified Foreign Visitors and Assignments. This clause does not apply to research that is performed at institutions of higher education under grants and funding opportunities sponsored by DOE program offices, and for which results will be published for access by the general public. This clause does apply to visits to the Fermilab site and/or access to FRA/Fermilab computer systems by foreign nationals (non-U.S. citizens).

- (a) All Subcontractor and lower-tier subcontractor employees requiring access to any Fermilab facility or sites, including on-site or remote access to Fermilab/FRA computer systems, are subject to DOE access restrictions. Any questions should be directed to either the subcontract designated Technical Representative or FRA Procurement Administrator.
- (b) The Subcontractor shall not assign foreign national (non-U.S. citizen) employees or other personnel to work at any Fermilab facility or site, including through on-site or remote access to Fermilab/FRA computer systems, who are citizens of, are employed or sponsored by or represent a government, company, institution, or other organization based in a country on the Department of State's List of State Sponsors of Terrorism without prior written approval from DOE Headquarters. Terrorist-sponsoring countries currently include Iran, Sudan and Syria, but may be updated from time to time by the State Department. Requests for access must be submitted to the FRA Procurement Administrator at least 180 days in advance to allow time for approval from the DOE.
- (c) FRA also is required by DOE to document all foreign nationals who are citizens of, are employed or sponsored by or represent a government, company, institution or organization based in, a sensitive country and who require access to a Fermilab facility or site, including either on-site or remote access to Fermilab/FRA computer systems. To obtain site access, the Subcontractor must provide the place of birth and citizenship for all foreign national employees/personnel working on this subcontract who may access a Fermilab facility or site, including on-site or remote access to Fermilab/FRA computer systems. Employees/personnel from specific sensitive countries may need additional processing and/or be subject to specific restrictions as required by DOE Order 142.3A.

## 70. COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS

70.1 The Subcontractor shall comply with all applicable U.S. export control laws and regulations.

70.2 The Subcontractor's responsibility to comply with all applicable laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

70.3 Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—

- (a) The Atomic Energy Act of 1954, as amended;
- (b) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);
- (c) The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*);
- (d) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);
- (e) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);
- (f) Export and Import of Nuclear Equipment and Material (10 CFR part 110);
- (g) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);
- (h) Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and
- (i) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).

70.4 In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities. NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (*e.g.*, the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (*e.g.*, commodities, software or technologies) that are



controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

70.5 The Subcontractor shall include the substance of this clause, including this paragraph 53.5, in all solicitations and Subcontracts.