APPENDIX B-4

STANDARD TERMS AND CONDITIONS FOR

CONSTRUCTION SUBCONTRACTS

March 1, 2020

Subcontractor is hereby on notice that the contracting party to this subcontract is the Alliance for Sustainable Energy, LLC, in its capacity as the Managing and Operating Contractor for the National Renewable Energy Laboratory (NREL) under U.S. Department No. DE-AC36-08GO28308.

Appendix B-4 Standard Terms and Conditions for Construction Subcontracts						
Appendix B-4 Clause Number	**FAR/DEAR Reference**	**Title**	**FD**	**OnSite Clause = Y**	**Threshold (Award Amount)**	**Date/Req'd Version**
Section I - Clauses Applicable to NREL Subcontracts						
1	52.202-1	Definitions			All	
2	NREL 08.100-01	Subcontract Issues and Disputes			All	
3	NREL 08.100-04	Lobbying Restrictions (Energy & Water Act)			All	2007
4	NREL 08.100-05	Subcontractor Acceptance of Notices of Violation or Alleged Violations, Fines, and Penalties			All	
5	NREL 08.100-06	Subcontractor Quality Representations			All	May 2009
6	52.204-7	System for Award Management			All	Oct 2018
7	52.204-13	System for Award Management Maintenance			All	Oct 2018
8	52.215-19	Notification of Ownership Changes	**X**		All	Oct 1997
9	52.219-8	Utilization of Small Business Concerns			All	
10	52.222-1	Notice to the Government of Labor Disputes			All	
11	52.222-3	Convict Labor			All	
12	52.222-4	Contract Work Hours and Safety Standards - Overtime Compensation	**X**		All	May 2014
13	52.222-20	Contracts for Materials, Supplies, Articles and Equipment Exceeding $15,000			All	
14	52.222-21	Prohibition of Segregated Facilities	**X**		All	Apr 2015
15	52.222-26	Equal Opportunity	**X**		All	Sep 2016
16	52.222-27	Affirmative Action Compliance Requirements for Construction			All	
17	52.222-50	Combating Trafficking in Persons	**X**		All	Mar 2015
18	52.222-55	Minimum Wages under Executive Order 13658	**X**		All	Dec 2015
19	52.223-3	Hazardous Material Identification and Material Safety Data - Alternate I			All	
20	52.225-9	Buy American - Construction Materials			All	
21	52.225-13	Restriction on Certain Foreign Purchases	**X**		All	Jun 2008
22	52.227-4	Patent Indemnity - Construction Contracts			All	Dec 2007
23	52.228-2	Additional Bond Security			All	Oct 1997
24	52.229-3	Federal, State, and Local Taxes			All	Feb 2013
25	52.229-6	Taxes - Foreign Fixed-Price Contracts			All	Feb 2013
26	52.232-5	Payments under Fixed-Price Construction Contracts			All	May 2014
27	52.232-24	Prohibition of Assignment of Claims			All	May 2014
28	52.232-33	Payment by Electronic Funds Transfer - System for Award Management			All	Jul 2013
29	52.232-39	Unenforceability of Unauthorized Obligations			All	
30	52.232-40	Providing Accelerated Payments to Small Business Subcontractors	**X**		All	Dec 2013
31	52.236-2	Differing Site Conditions			All	Apr 1984
32	52.236-3	Site Investigation and Conditions Affecting the Work			All	Apr 1984

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33	52.236-5	Material and Workmanship			All	Apr 1984
34	52.236-6	Superintendence by the Subcontractor			All	Apr 1984
35	52.236-7	Permits and Responsibilities			All	Nov 1991
36	52.236-8	Other Contracts			All	Apr 1984
37	52.236-10	Operations and Storage Areas			All	Apr 1984
38	52.236-11	Use and Possession Prior to Completion			All	Apr 1984
39	52.236-12	Cleaning Up			All	Apr 1984
40	52.236-13	Accident Prevention			All	Nov 1991
41	52.236-15	Schedules for Construction Contracts			All	Apr 1984
42	52.236-21	Specifications and Drawings for Construction - Alternate I			All	Feb 1997
43	52.242-13	Bankruptcy			All	Jul 1995
44	52.242-14	Suspension of Work			All	Apr 1984
45	52.242-15	Stop Work Order - Cost-Reimbursement - Alternate			All	Aug 1989
46	52.243-4	Changes			All	June 2007
47	52.244-2	Subcontracts - Alternate I			All	Oct 2010
48	52.244-6	Subcontracts for Commercial Items	**X**		All	Nov 2017
49	52.246-12	Inspection of Construction			All	Aug 1996
50	52.246-21	Warranty of Construction - Alternate I			All	Mar 1994
51	52.247-1	Commercial Bill of Lading Notations			All	Feb 2006
52	52.247-63	Preference for U.S.-Flag Air Carriers	**X**		All	Jun 2003
53	52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels	**X**		All	Feb 2006
54	52.249-1	Termination for Convenience (Short Form) - Fixed Price			All	Apr 1984
55	52.249-2	Termination for Convenience - Fixed Price - Construction - Alternate I			All	Apr 2012
56	52.249-10	Default - Fixed Price - Construction			All	Apr 1984
57	52.249-14	Excusable Delays			All	
58	952.204-71	Sensitive Foreign Nations Controls	**X**		All	Mar 2011
59	952.204-75	Public Affairs			All	Dec 2000
60	952.204-77	Computer Security	**X**		All	Aug 2006
61	970.5225-1	Compliance with Export Control Laws and Regulations	**X**		All	Nov 2015
62	970.5232-3	Accounts, Records, and Inspection - Alternate I	**X**		All	Clause Dec 2010; Alt Dec 2000
63	970.5245-1	Property - Alternate I	**X**		All	Aug 2016
64	52.222-6	Construction Wage Rate Requirements	**X**		>$2K	Most Current
65	52.222-7	Withholding of Funds	**X**		>$2K	Most Current
66	52.222-8	Payrolls and Basic Records	**X**		>$2K	Most Current
67	52.222-9	Apprentices and Trainees	**X**		>$2K	Most Current
68	52.222-10	Compliance with Copeland Act Requirements	**X**		>$2K	Most Current

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69	52.222-11	Subcontracts (Labor Standards)	**X**		>$2K	Most Current
70	52.222-12	Contract Termination - Debarment	**X**		>$2K	Most Current
71	52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations	**X**		>$2K	Most Current
72	52.222-14	Disputes Concerning Labor Standards	**X**		>$2K	Most Current
73	52.222-15	Certification of Eligibility	**X**		>$2K	Most Current
74	52.222-54	Employment Eligibility Verification	**X**		>$3.5K	Oct 2015
75	52.222-40	Notification of Employee Rights under the National Labor Relations Act	**X**		>$10K	Dec 2010
76	52.223-18	Encouraging Contractor Policies to Ban Text Messaging while Driving	**X**		>$10K (2018 mpt)	Aug 2011
77	52.222-36	Equal Opportunity for Workers with Disabilities	**X**		>$15K	Jul 2014
78	52.225-8	Duty-Free Entry	**X**		>$15K*	Oct 2010
79	52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	**X**		>$35K	Oct 2015
80	52.203-6	Restrictions on Subcontractor Sales to the Government	**X**		>SAT	Sep 2006
81	52.203-7	Anti-Kickback Procedures	**X**		>SAT	Apr 2014
82	52.203-12	Limitation on Payments to Influence Certain Federal Transactions	**X**		>SAT	Oct 2010
83	52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights	**X**		>SAT	Apr 2014
84	52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	**X**		>SAT	Jan 2017
85	52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper			>SAT	
86	52.215-23	Limitations on Pass-Through Charges	**X**		>SAT	Oct 2009
87	52.222-35	Equal Opportunity for Veterans	**X**		$150K	Oct 2015
88	52.222-37	Employment Reports on Veterans	**X**		$150K	Feb 2016
89	952.226-74	Displaced Employee Hiring Preference	**X**		>$500K	Jun 1997
Section II - Clauses Applicable to Subcontracts that Require Performance on NREL-Operated Facilities						
90	NREL 08.100-02	Security and Access Requirements		**Y**	All	
91	NREL 09.100-02	Worker Safety and Health Requirements		**Y**	All	Mar 2020
92	52.223-6	Drug-Free Workplace		**Y**	All	May 2001
93	52.228-5	Insurance - Work on a Government Installation - Construction		**Y**	All	Jan 1997
94	52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements		**Y**	All	Apr 1984
95	52.236-14	Availability and Use of Utility Services		**Y**	All	Apr 1984
96	952.203-70	Whistleblower Protection for Contractor Employees	**X**	**Y**	All	Dec 2000

Appendix B-4
Standard Terms and Conditions for Construction Subcontracts

Appendix B-4 Clause Number	FAR/DEAR Reference	Title	FD	OnSite Clause = Y	Threshold (Award Amount)	Date/Req'd Version
97	970.5204-3	Access to and Ownership of Records (Deviation)	**X**	**Y**	All	Oct 2014
98	970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution	**X**	**Y**	All	Dec 2000
Section III - Sustainable Acquisition Clauses						
99	970.5223-7	Sustainable Acquisition Program - Construction	**X**	**Y**	>SAT	Oct 2010
100	52.223-2	Affirm Procurement of Biobased Products under Service and Construction Contracts		**Y**	All	Sep 2013
101	52.223-10	Waste Reduction Program		**Y**	All	May 2011
102	52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons			All	Jun 2016
103	52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners			All	Jun 2016
104	52.223-15	Energy Efficiency in Energy-Consuming Products	**X**	**Y**	All	Dec 2007
105	52.223-17	Affirm Procurement of EPA-designated Items in Service and Construction Contracts		**Y**	All	Aug 2018

DEFINITIONS (SPECIAL) (JUL 2014)
*Derived from **FAR 52.202-1** (NOV 2013) as modified by **DEAR 902.101***
(Applies to all subcontracts that exceed the Simplified Acquisition Threshold.)

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

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

(c) When a solicitation provision or subcontract 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.

(d) The following words and terms are in addition to paragraph (a) of this section—
  (1) "Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy (DOE).
  (2) "DOE Contracting Officer" means a person with the authority to enter into, administer, and/or terminate DOE Prime Contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
  (3) "NREL Subcontract Administrator" means an employee of the entity that manages and operates the National Renewable Energy Laboratory (NREL) with the authority to enter into, administer, and/or terminate subcontracts and make related determinations and findings. The term includes certain authorized representatives of the NREL acting within the limits of their authority as delegated by the NREL.
  (4) Except as otherwise provided in this subcontract, the terms "subcontracts and lower-tier subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders and changes and modifications to purchase orders.
  (5) "DOE" means the Department of Energy.
  (6) "Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory under prime contract to the U.S. Department of Energy (DOE). The National Renewable Energy Laboratory (NREL) is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
  (7) "DOE Directive" means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of DOE's accounting and procedures handbook applicable to

Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE and NREL concerns relating to health, safety, or the environment.

SUBCONTRACT ISSUES AND DISPUTES (SPECIAL) (SEP 2007)
*Derived from **NREL 08.100-01***
(Applies to all subcontracts.)

(a) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.

(b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:

(1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.

(2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.

(c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.

(d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.

(e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.

(f) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

LOBBYING RESTRICTIONS (ENERGY & WATER ACT) (SPECIAL) (2007)
*Derived from **NREL 08.100-04***
(Applies to all subcontracts.)
The Subcontractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)
*Derived from **NREL 08.100-05***
(Applies to all subcontracts.)

(a) The Subcontractor shall immediately notify the NREL Subcontract Administrator of any notice the Subcontractor may receive including Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with the operations of NREL and/or performance of work under the Subcontract.

(b) When deemed appropriate by the NREL Subcontract Administrator, the Subcontractor shall conduct negotiations with regulators regarding NOV/NOAVs, fines and penalties, including, if the NREL Subcontract Administrator so requires, accepting NOV/NOAVs in its own name. The Subcontractor shall make no commitments or offers to regulators binding NREL/Government unless approved in advance and in writing by the NREL Subcontract Administrator. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Subcontractor being liable for any excess costs to NREL/Government associated with or resulting from such offers/commitments.

(c) The Subcontractor shall support and provide assistance to the NREL/Government concerning any matter arising under a NOV/NOAV.

SUBCONTRACTOR QUALITY REPRESENTATIONS (SPECIAL) (MAY 2009)
*Derived from **NREL 08.100-06***
(Applies to all subcontracts, including construction subcontracts, where items or parts are supplied or delivered.)

(a) New Materials. Unless otherwise specified in this subcontract, all items or parts supplied or delivered by the Subcontractor, or its lower-tier Subcontractors, shall consist of new materials. “New materials” means previously unused. The Subcontractor shall not deliver any item or part that is residual inventory resulting from terminated Government contracts/subcontracts or former Government surplus property.

(b) Recycled or Recovered Materials. The requirement for supply or delivery of items or parts consisting of new materials does not exclude the delivery of recycled or recovered materials as defined by the Environmental Protection Agency in 40 CFR 247.

(c) Used, Refurbished, or Rebuilt Items or Parts. In the event that items or parts consisting of new materials are not reasonably available to the Subcontractor, with prior NREL Subcontract Administrator written approval, the Subcontractor may supply or deliver either: used; or refurbished; or rebuilt items or parts that are not of such an age or so deteriorated as to impair their usefulness or safety and conform to government or industry-accepted specifications or national consensus standards.

(d) Suspect or Counterfeit Items or Parts. “Suspect or counterfeit items or parts” mean (1) items or parts that may be of new manufacture but labeled to represent a different class of items or parts or (2) used and/or refurbished items or parts complete with false labeling, that are represented as new items or parts.

(e) Indemnification of NREL/DOE. The Subcontractor shall indemnify NREL and the DOE, their officers, agents, and employees, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from items or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, items or parts that are defective, suspect, or counterfeit; items or parts that have been provided under false pretenses; and items or parts that are materially altered, damaged, deteriorated, degraded, or result in product failure.

(f) Quality Representations. The Subcontractor represents that items and parts supplied or delivered under this Subcontract shall not include suspect or counterfeit items or parts nor shall counterfeit or suspect items or parts be used in performing any work under this Subcontract whether on or off the NREL operated facility. In the event that the Subcontractor or its lower-tier Subcontractors supplies or delivers suspect or counterfeit items or parts, such items or parts shall be impounded by NREL, or the Subcontractor shall remove the items or parts as directed by the NREL Subcontract Administrator. The Subcontractor shall promptly replace the counterfeit or suspect items or parts with supplies acceptable to NREL and the Subcontractor shall be liable for all costs relating to impoundment, removal, and replacement.

(g) NREL Rights. The rights of NREL under this clause are in addition to any other rights provided by law or under this Subcontract and such rights shall survive the termination or natural completion of the period of performance of this Subcontract.

SYSTEM FOR AWARD MANAGEMENT (NOV 2019)
Derived from FAR 52.204-7 (OCT 2018)
Applies to all subcontracts and solicitations.

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

"Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that–

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the NREL Subcontract Administrator to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.
(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
(3) Company Physical Street Address, City, State, and Zip Code.
(4) Company Mailing Address, City, State and Zip Code (if separate from physical).
(5) Company telephone number.
(6) Date the company was started.
(7) Number of employees at your location.
(8) Chief executive officer/key manager.
(9) Line of business (industry).

(10) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the NREL Subcontract Administrator, the NREL Subcontract Administrator reserves the right to proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See https://ww.sam.gov for information on registration.

SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (NOV 2019)
Derived from FAR 52.204-13 (OCT 2018)
(Applies to all subcontracts.)

(a) Definitions. As used in this clause—

"Electronic Funds Transfer (EFT) indicator" means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

"Registered in the System for Award Management (SAM)" means that–

(1) The subcontractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart4.14), into SAM;
(2) The subcontractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;
(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The subcontractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes–

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
(2) Prospective subcontractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this subcontract contained the provision 52.204-7, and the subcontractor was unable to register prior to award, the subcontractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The subcontractor shall maintain registration in SAM during subcontract performance and through final payment of any subcontract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The subcontractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from NREL and the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the subcontractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and

complete. Updating information in SAM does not alter the terms and conditions of this subcontract and is not a substitute for a properly executed contractual document.

(d)

(1)

(i) If a subcontractor has legally changed its business name or “doing business as” name (whichever is shown on the subcontract), or has transferred the assets used in performing the subcontract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the subcontractor shall provide the responsible NREL Subcontract Administrator a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible NREL Subcontract Administrator. The subcontractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the subcontractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the subcontractor to be other than the subcontractor indicated in the subcontract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this subcontract.

NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (OCT 2009)
*Derived from **FAR 52.215-19** (OCT 1997) (FD)*
(Applies to all subcontracts.)

(a) The Subcontractor shall make the following notifications in writing:
  (1) When the Subcontractor becomes aware that a change in its ownership or name has occurred, or is certain to occur, the Subcontractor shall provide such notification in accordance with NREL's novation and name change procedures.
  (2) When a change that could result in changes in the valuation of the Subcontractor's capitalized assets in the accounting records or any other asset valuations or cost changes, the Subcontractor shall provide such notification to the NREL Subcontract Administrator within thirty (30) days.

(b) In the event of change in ownership, the Subcontractor shall—
  (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  (2) Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
  (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives, are identified accurately before and after each of the Subcontractor's ownership changes; and
  (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

(c) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts where it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination is subject to FAR 31.2, cost principles and procedures applicable to commercial organizations. The Subcontractor shall notify the NREL Subcontract Administrator of the change in ownership or name of any lower-tier Subcontractor subject to the terms of this clause.

UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016)
*Derived from **FAR 52.219-8** (FD) (NOV 2016)*
(Applies to all subcontracts exceeding $150,000.)

(a) *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

(i) CFR 124.105) by-- One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

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

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

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

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

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

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

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

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

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing subcontracts let by any Federal agency,

including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors and subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Subcontractor hereby agrees to carry out this policy in the awarding of lower-tier 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 awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.

(d)

(1) The Contractor may accept a 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 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.

(2) The Subcontractor may accept a lower-tier 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 lower-tier subcontractor is registered in SAM; and

(ii) The lower-tier 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.

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

(4) 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 lower-tier subcontractors regarding the lower-tier subcontractor's size or socioeconomic status.

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

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

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

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

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
*Derived from **FAR 52.222-1** (FEB 1997)*
(Applies to subcontracts for services and construction.)
If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall immediately give notice, including all relevant information, to the NREL Subcontract Administrator.

CONVICT LABOR (JUN 2003)
*Derived from **FAR 52.222-3** (JUN 2003)*
(Applies to all subcontracts.)

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

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

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

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

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

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

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

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

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

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

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (MAY 2014)

*Derived from **FAR 52.222-4** (MAY 2014) (FD)*

(Applies to subcontracts exceeding $150,000 involving the substantial employment of laborers or mechanics.)

(a) Overtime requirements. No Subcontractor or lower-tier 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 1/2 times the basic rate of pay for each hour worked over 40 hours.

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

(c) Withholding for unpaid wages and liquidated damages. The NREL Subcontract Administrator will withhold from payments due under the subcontract sufficient funds required to satisfy any Subcontractor or lower-tier Subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the subcontract are insufficient to satisfy Subcontractor or lower-tier Subcontractor liabilities, the NREL Subcontract Administrator through the DOE Contracting Officer will withhold payments from other Federal or Federally assisted contracts/subcontracts held by the same Subcontractor or lower-tier Subcontractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) Payrolls and basic records.

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

(2) The Subcontractor and its lower-tier Subcontractors shall allow authorized representatives of the NREL Subcontract Administrator or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Subcontractor or lower-tier Subcontractor also shall allow authorized representatives of the NREL Subcontract Administrator or Department of Labor to interview employees in the workplace during working hours.

(e) Lower-tier subcontracts. The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in lower-tier subcontracts may require or involve the employment of laborers and mechanics and require lower-tier Subcontractors to include these provisions in any such sub-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier Subcontractor or sub-tier Subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

SUBCONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES AND EQUIPMENT (MAY 2014)
*Derived from **FAR 52.222-20** (MAY 2014)*
(Applies to all subcontracts exceeding $15,000 for manufacturing or furnishing of materials, supplies, articles, or equipment subject to the Walsh-Healey Public Contracts Act.)
If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $15,000, and is subject to 41 U.S.C. chapter 65, the following terms and conditions apply:

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

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

PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
*Derived from **FAR 52.222-21** (APR 2015) (FD)*
(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.)

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

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

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

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

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

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

EQUAL OPPORTUNITY (SEP 2016)
*Derived from **FAR 52.222-26** (SEP 2016) (FD)*
(Applies to all subcontracts unless exempt from Executive Order 11246.) (See FAR 22.807(a).)

(a) 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 Subcontractor to attract and retain a particular employee for the value the employee is perceived to add to the Subcontractor'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 Subcontractor 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 .

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

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

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

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

(c) (1) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation,

gender identity, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

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

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

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

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

(5)

(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.

(6) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the NREL Subcontract

Administrator 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.

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

(8) The Subcontractor shall furnish to NREL 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 twelve (12) months preceding the date of subcontract award, the Subcontractor shall, within thirty (30) days after subcontract 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.

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

(10) 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 NREL/ Government contracts/subcontracts, 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.

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

(12) The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL Subcontract Administrator 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 lower-tier Subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.

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

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015)

*Derived from **FAR 52.222-27***

(Applies to construction subcontracts exceeding $10,000.)

(a) Definitions. As used in this clause—

"Covered area" means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," means the Deputy Assistant Secretary for the Office of Federal subcontract Compliance Programs, U.S. Department of Labor, or a designee.

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

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

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

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

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

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

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

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

(b) If the Subcontractor, or a lower-tier subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such lower-tier subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this subcontract.

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

(d) The Subcontractor shall implement the affirmative action procedures in paragraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this subcontract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Subcontractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Subcontractor performs construction work in a geographical area

located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Subcontractor is expected to make substantially uniform progress toward its goals in each craft.

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

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

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

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

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

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

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

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

(6) Disseminate the Subcontractor's equal employment policy by—
- (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Subcontractor in meeting its subcontract obligations;
- (ii) Including the policy in any policy manual and in collective bargaining agreements;
- (iii) Publicizing the policy in the company newspaper, annual report, etc.;
- (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
- (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

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

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

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

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

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

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

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

(14) Ensure that all facilities and company activities are non-segregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for lower-tier subcontracts for minority and female construction subcontractors and suppliers, including circulation of

solicitations to minority and female contractor associations and other business associations.

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

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

(1) Actively participates in the group;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMBATING TRAFFICKING IN PERSONS (MAR 2015)
*Derived from **FAR 52.222-50** (MAR 2015) (FD)*
(Applies to all subcontracts.)

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

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

"Coercion" means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Involuntary servitude" includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

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

"Severe forms of trafficking in persons" means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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

"Lower-Tier Subcontract" means any contract entered into by a lower-tier subcontractor to furnish supplies or services for performance of a subcontract.

"Lower-Tier Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a Subcontractor or another Lower-Tier Subcontractor.

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

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

(1) Engage in severe forms of trafficking in persons during the period of performance of the subcontract;

(2) Procure commercial sex acts during the period of performance of the subcontract;

(3) Use forced labor in the performance of the subcontract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The Subcontractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the Subcontractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Subcontractor requirements*. The Subcontractor shall—

(1) Notify its employees and agents of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

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

(2) Take appropriate action, up to and including termination, against employees, agents, or lower-tier Subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification*.

(1) The Subcontractor shall inform the NREL Subcontract Administrator and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Subcontractor employee, lower-tier Subcontractor, or lower-tier Subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-

1. 13(b)(3)(i)(A), if that clause is included in the solicitation or subcontract, which requires disclosure to NREL General Counsel when the Subcontractor has credible evidence of fraud); and

(ii) Any actions taken against a Subcontractor employee, lower-tier Subcontractor, lower-tier Subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one subcontract, the Subcontractor shall inform the NREL subcontract administrator for the subcontract with the highest dollar value.

(e) *Remedies*. In addition to other remedies available to the Government, the Subcontractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Subcontractor to remove a Subcontractor employee or employees from the performance of the subcontract;
(2) Requiring the Subcontractor to terminate a subcontract;
(3) Suspension of subcontract payments until the Subcontractor has taken appropriate remedial action;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Subcontractor non-compliance;
(5) Declining to exercise available options under the contract;
(6) Termination of the subcontract for default or cause, in accordance with the termination clause of this subcontract; or
(7) Suspension or debarment.

(f) *Mitigating and aggravating factors*. When determining remedies, the NREL Subcontract Administrator may consider the following:

(1) *Mitigating factors*. The Subcontractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
(2) Aggravating factors. The Subcontractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the NREL Subcontract Administrator to do so.

(g) *Full cooperation*.

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

(iii) Restrict the Subcontractor from—
(A) Conducting an internal investigation; or
(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan*.
(1) This paragraph (h) applies to any portion of the contract that—
(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
(ii) Has an estimated value that exceeds $500,000.
(2) The Subcontractor shall maintain a compliance plan during the performance of the contract that is appropriate—
(i) To the size and complexity of the contract; and
(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
(3) *Minimum requirements*. The compliance plan must include, at a minimum, the following:
(i) An awareness program to inform Subcontractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.
(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.
(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
(iv) A housing plan, if the Subcontractor or subSubcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
(v) Procedures to prevent agents and Lower-Tier Subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subSubcontractor employees that have engaged in such activities.
(4) *Posting*.
(i) The Subcontractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Subcontractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Subcontractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Subcontractor shall provide the compliance plan to the NREL Subcontract Administrator upon request.

(5) *Certification*. Annually after receiving an award, the Subcontractor shall submit a certification to the NREL Subcontract Administrator that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, lower-tier subcontract or lower-tier 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, lower-tier subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Subcontractor or lower-tier subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts*.

(1) The Subcontractor shall include the substance of this clause, including this paragraph (i), in all lower-tier subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the lower-tier subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any lower-tier subcontractor is required by this clause to submit a certification, the Subcontractor shall require submission prior to the award of the lower-tier subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015) (SPECIAL NOV 2016)
*Derived from **FAR 52.222-55** (DEC 2015)*
(Applies to all service and construction subcontracts.)

(a) Definitions. As used in this clause–
"United States" means the 50 states and the District of Columbia.
"Worker" –
(1) Means any person engaged in performing work on, or in connection with, a subcontract covered by Executive Order 13658, and—
(i) Whose wages under such subcontract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67) (formerly the Service Contract Act of 1965), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV) (formerly known as the Davis-Bacon Act);
(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and
(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.
(2) Includes workers performing on, or in connection with, the subcontract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).
(3) Also includes any person working on, or in connection with, the subcontract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) Executive Order Minimum wage rate.
(1) The Subcontractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this Subcontract, a minimum hourly wage rate of $10.10 per hour beginning January 1, 2015.
(2) The Subcontractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this subcontract.
(3) (i) The Subcontractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including lower-tier subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for lower-tier subcontractors). Associated labor costs shall include

increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Lower-tier subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Subcontractors shall consider any lower-tier subcontractor requests for such price adjustment.

(iii) The Subcontract Administrator will not adjust the subcontract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Subcontractor warrants that the prices in this subcontract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this subcontract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Subcontractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Subcontractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Subcontractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Subcontractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Subcontractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Subcontractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

(c) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition–

(ii) Workers are covered regardless of the contractual relationship alleged to exist between the subcontractor or lower-tier subcontractor and the worker;

(iii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iv) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or

with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to–

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with subcontracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the subcontract, but who are not directly engaged in performing the specific work called for by the subcontract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such subcontracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to-

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) Notice. The Subcontractor shall notify all workers performing work on, or in connection with, this subcontract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Subcontractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Subcontractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Subcontractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the subcontractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) Payroll Records.

(1) The Subcontractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Subcontractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Subcontractor shall also make such records available upon request of the Subcontract Administrator.

(3) The Subcontractor shall make a copy of the subcontract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this subcontract. Upon direction of the Administrator or upon the Subcontract Administrator's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Subcontractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Subcontractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) Withholding. The Subcontract administrator, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Subcontractor under this or any other NREL subcontract with the same Subcontractor, sufficient to pay workers the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor/subcontractor compliance, the procedures for resolving disputes concerning a subcontractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. These disputes include disputes between the Subcontractor (or any of its lower-tier subcontractors) and NREL, the Department of Labor, or the workers or their representatives.

(i) Antiretaliation. The Subcontractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Lower-tier subcontractor compliance. The Subcontractor is responsible for lower-tier subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due lower-tier subcontractor workers.

(k) Lower-Tier subcontracts. The Subcontractor shall include the substance of this clause, including this paragraph (k) in all lower-tier subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards (formerly the Service Contract Act of 1965) statute or the Wage Rate Requirements (Construction) (formerly known as the Davis-Bacon Act) statute, and are to be performed in whole or in part in the United States.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)
*Derived from **FAR 52.223-3** (JAN 1997)*
(Applies to subcontracts for supplies, services, and construction that requires the delivery of hazardous materials.)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the subcontract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this subcontract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this subcontract.

Material (If none, insert "None")	Identification No.
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the subcontract whenever the Subcontractor determines that any other material to be delivered under this subcontract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Subcontractor shall promptly notify the NREL Subcontract Administrator and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by NREL shall relieve the Subcontractor of any responsibility or liability for the safety of Government, Subcontractor, or lower-tier Subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Subcontractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) NREL/Government's rights in data furnished under this subcontract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for NREL/ Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h) (1) of this clause, in precedence over any other clause of this subcontract providing for rights in data.

(3) NREL/Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i) (2), the Subcontractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
For items shipped to consignees, the Subcontractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Subcontractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the NREL Subcontract Administrator.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Subcontractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

BUY AMERICAN —CONSTRUCTION MATERIALS (MAY 2014)
*Derived from **FAR 52.225-9** (MAY 2014)*
(Applies to construction subcontracts less than $6,932,000)

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

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

(1) Means any item of supply (including construction material) that is—
  (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  (ii) Sold in substantial quantities in the commercial marketplace; and
  (iii) Offered to NREL/the Government, under a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Subcontractor or lower-tier Subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by NREL/the Government are supplies, not construction material.

"Cost of components" means—

(1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States;
(2) A construction material manufactured in the United States, if—
  (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
  (ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

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

(b) *Domestic preference.*

(1) This clause implements the 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction

material that is a COTS item. (See FAR 12.505(a)(2)). The Subcontractor shall use only domestic construction material in performing this subcontract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the NREL Subcontract Administrator in the subcontract schedule.

(3) The NREL Subcontract Administrator may add other foreign construction material to the list in paragraph (b)(2) of this clause if the NREL/Government determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American statute.*

(1)

(i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for NREL/Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Subcontractor request for a determination submitted after subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before subcontract award. If the Subcontractor does not submit a satisfactory explanation, NREL/Government need not make a determination.

(2) If NREL/the Government determines after subcontract award that an exception to the Buy American statute applies and the NREL Subcontract Administrator and the Subcontractor negotiate adequate consideration, the NREL Subcontract Administrator will modify the subcontract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless NREL/the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	**Unit of measure**	**Quantity**	**Price (dollars)***
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
*Derived from **FAR 52.225-13** (JUN 2008)(FD)*
(Applies to all subcontracts.)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this subcontract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Subcontractor shall insert this clause, including this paragraph (c), in all lower-tier subcontracts.

PATENT INDEMNITY-CONSTRUCTION SUBCONTRACTS (DEC 2007)
Derived from FAR 52.227-4 (DEC 2007)
Applies to construction subcontracts.
Except as otherwise provided, the Subcontractor shall indemnify NREL/Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this subcontract or out of the use or disposal by or for the account of NREL/Government of supplies furnished or work performed under this subcontract.

ADDITIONAL BOND SECURITY (OCT 1997)
*Derived from **FAR 52.228-2** (OCT 1997)*
Applies to subcontracts where a bond is required.
The Subcontractor shall promptly furnish additional security required to protect NREL/Government and persons supplying labor or materials under this subcontract if—

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this subcontract becomes unacceptable to NREL/Government;
(b) Any surety fails to furnish reports on its financial condition as required by NREL/Government;
(c) The subcontract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the NREL Subcontract Administrator; or

An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Subcontractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least thirty (30) days before an ILC's schedule expiration, the NREL Subcontract Administrator has the right to immediately draw on the ILC.

FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)
*Derived from **FAR 52.229-3** (FEB 2013)*
(Applies to fixed price subcontracts exceeding the Simplified Acquisition Threshold.)

(a) As used in this clause—
"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.
"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.
"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.
"Subcontract 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.
"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.

(b) (1) The subcontract price includes all applicable Federal, State, and local taxes and duties.
(2) [Reserved]

(c) 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.

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

(e) 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 the NREL Subcontract Administrator.

(f) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Subcontractor shall promptly notify the NREL Subcontract Administrator 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 the NREL Subcontract Administrator directs.

(h) The Government through NREL 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.

TAXES—FOREIGN FIXED PRICE SUBCONTRACTS (FEB 2013)
*Derived from **FAR 52.229-6** (FEB 2013)*
(Applies to fixed price subcontracts exceeding the Simplified Acquisition Threshold and performed wholly or partly in a foreign country.)

(a) To the extent that this subcontract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the subcontract.

(b) *Definitions*. As used in this clause—
"Subcontract 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.
"Country concerned" means any country, other than the United States and its outlying areas, in which expenditures under this subcontract are made.
"Tax" and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.
"All applicable 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, pursuant to written ruling or regulation in effect on the subcontract date.
"After-imposed tax" means any new or increased 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, other than excepted tax, 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.
"After-relieved tax" means any amount of tax or duty, other than an excepted tax, 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, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.
"Excepted tax" means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) (1) Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
(2) [Reserved]

(d) (1) Except as provided in subparagraph (d)(2) of this clause, the subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (i) of this clause.

(e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. NREL/the Government of the United States shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. NREL/the Government of the United States shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL/the Government.

(f) The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and 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 the NREL Subcontract Administrator or to comply with the provisions of paragraph (i) of this clause.

(g) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds $250.

(h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to NREL/the Government of the United States as the NREL Subcontract Administrator directs.

(i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, NREL, the Subcontractor, any lower-tier subcontractor, or the transactions or property covered by this subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorneys' fees.

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION SUBCONTRACTS (MAY 2014)
*Derived from **FAR 52.232-5***
(Applies to fixed-price construction subcontracts.)

(a) *Payment of price*. NREL shall pay the Subcontractor the subcontract price as provided in this subcontract.

(b) *Progress payments*. NREL shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the NREL Subcontract Administrator, on estimates of work accomplished which meets the standards of quality established under the subcontract, as approved by the NREL Subcontract Administrator.

(1) The Subcontractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the subcontract covered by the payment requested.

(ii) A listing of the amount included for work performed by each lower-tier subcontractor under the subcontract.

(iii) A listing of the total amount of each lower-tier subcontract under the subcontract.

(iv) A listing of the amounts previously paid to each such lower-tier subcontractor under the subcontract.

(v) Additional supporting data in a form and detail required by the NREL Subcontract Administrator.

(2) In the preparation of estimates, the NREL Subcontract Administrator may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site also may be taken into consideration if—

(i) Consideration is specifically authorized by this subcontract; and

(ii) The Subcontractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this subcontract.

(c) *Subcontractor certification*. Along with each request for progress payments, the Subcontractor shall furnish the following certification, or payment shall not be made: (However, if the Subcontractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(2) All payments due to lower-tier subcontractors and suppliers from previous payments received under the subcontract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with lower-tier subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the Subcontractor intends to withhold or retain from a lower-tier subcontractor or supplier in accordance with the terms and conditions of the lower-tier subcontract; and

(4) This certification is not to be construed as final acceptance of a lower-tier subcontractor's performance.

_____
(Name)

_____
(Title)

_____
(Date)

(d) *Refund of unearned amounts*. If the Subcontractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Subcontractor that fails to conform to the specifications, terms, and conditions of this subcontract (hereinafter referred to as the "unearned amount"), the Subcontractor shall—

(1) Notify the NREL Subcontract Administrator of such performance deficiency; and

(2) Be obligated to pay NREL/the Government an amount (computed by the NREL Subcontract Administrator in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—

(i) The date the Subcontractor notifies the NREL Subcontract Administrator that the performance deficiency has been corrected; or

(ii) The date the Subcontractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage*. If the NREL Subcontract Administrator finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the NREL Subcontract Administrator shall authorize payment to be made in full. However, if satisfactory progress has not been made, the NREL Subcontract Administrator may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the NREL Subcontract Administrator may retain from previously withheld funds and future progress payments that amount the NREL Subcontract Administrator considers adequate for protection of NREL/the Government and shall release to the Subcontractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the subcontract, for which the price is stated separately in the subcontract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights*. All material and work covered by progress payments made shall, at the time of payment, become the sole property of NREL/the Government, but this shall not be construed as—

(1) Relieving the Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of NREL/the Government to require the fulfillment of all of the terms of the subcontract.

(g) *Reimbursement for bond premiums*. In making these progress payments, NREL shall, upon request, reimburse the Subcontractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Subcontractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment*. NREL shall pay the amount due the Subcontractor under this subcontract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against NREL/the Government arising by virtue of this subcontract, other than claims, in stated amounts, that the Subcontractor has specifically excepted from the operation of the release. A

release may also be required of the assignee if the Subcontractor's claim to amounts payable under this subcontract has been assigned.

(i) *Limitation because of undefinitized work*. Notwithstanding any provision of this subcontract, progress payments shall not exceed 80 percent on work accomplished on undefinitized subcontract actions. A "subcontract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including subcontract modifications for additional supplies or services, but not including subcontract modifications that are within the scope and under the terms of the subcontract, such as subcontract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts*. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause shall be—

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Subcontractor receives the unearned amount; and

(2) Deducted from the next available payment to the Subcontractor.

ASSIGNMENT OR TRANSFER (MAY 2014) (SPECIAL OCT 2008)
*Derived from **FAR 52.232-24** (MAY 2014)*
Applies to all subcontracts.

(a) Except as expressly authorized in writing by the NREL Subcontract Administrator, this subcontract or any interest therein or claim under this subcontract shall not be assigned or transferred by the Subcontractor.

(b) In the event of any authorization of assignment or transfer, the parties shall file written notice together with a true copy of the instrument of the assignment or transfer with the NREL Subcontract Administrator. Such assignment or transfer shall cover all amounts payable under the subcontract not already paid, shall not be made to more than one party, and shall not be subject to further assignment or transfers.

(c) When directed by DOE, the Prime Contractor, may assign or transfer all its rights and obligations under this subcontract to DOE or its designee.

PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT (NOV 2016)

*Derived from **FAR 52.232-33** (JUL 2013)*

(Applies to all subcontracts where lower-tier Subcontractor is a small business concern.)

(a) Method of payment.

(1) All payments by NREL under this subcontract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event NREL is unable to release one or more payments by EFT, the subcontractor agrees to either—

(ii) Accept payment by check or some other mutually agreeable method of payment; or

(iii) Request NREL to extend the payment due date until such time as NREL can make payment by EFT (but see paragraph (d) of this clause).

(b) Subcontractor's EFT information. NREL shall make payment to the subcontractor using the EFT information contained in the Representations and Certifications and NREL ACH Banking Information form submitted with the offer. Information provided to NREL in these documents shall be consistent with that entered in the Government's System for Award Management (SAM) database. In the event that the EFT information changes, the subcontractor shall be responsible for providing the updated information in updated Representations and Certifications submitted to the subcontract administrator and to the SAM database.

(c) Mechanisms for EFT payment. NREL may make payment by EFT through either the Automated Clearing House (ACH) network. Suspension of payment. If the subcontractor's EFT information is incorrect, then NREL need not make payment to the subcontractor under this subcontract until correct EFT information is provided in Representations and Certifications, the NREL ACH Banking Information form and entered into the SAM database; and any invoice request shall be deemed not to be a proper invoice for the purpose of prompt payment under this subcontract. The prompt payment terms of the subcontract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(d) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because NREL used the subcontractor's EFT information incorrectly, NREL remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the subcontractor's EFT information was incorrect, and—

(ii) If the funds are no longer under the control of the NREL Accounts Payable office, NREL is deemed to have made payment and the subcontractor is responsible for recovery of any erroneously directed funds; or

(iii) If the funds remain under the control of the NREL Accounts Payable office, NREL shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(e) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this subcontract if, payment is on or before the payment due date, provided the specified payment date is a valid date under the payment terms of the subcontract.

(f) No EFT assignment of claims is allowable under this subcontract.

(g) Liability for change of EFT information by financial agent. NREL is not liable for errors resulting from changes to EFT information made by the subcontractor's financial agent.

(h) Payment information. The NREL Accounts Payable office shall forward to the subcontractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to NREL's payment processing contractor. NREL may request the subcontractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the NREL payment office is capable of executing. However, NREL does not guarantee that any particular format or method of delivery is available and retains the latitude to use the format and delivery method most convenient to NREL. If NREL makes payment by check in accordance with paragraph (a) of this clause, NREL shall mail the payment information to the remittance address contained in the subcontractor's Representations and Certifications and the subcontract.

UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)
*Derived from **FAR 52.232-39** (JUN 2013)*
(Applies to all subcontracts where any supply or service acquired is subject to any End User License Agreement.)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this subcontract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring NREL/the Government to indemnify the Subcontractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
   (1) Any such clause is unenforceable against NREL/the Government.
   (2) Neither NREL/the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind NREL/the Government or any Government authorized end user to such clause.
   (3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS LOWER-TIER SUBCONTRACTORS (DEC 2013)

*Derived from **FAR 52.232-40** (FD)*

(Applies to all subcontracts where lower-tier Subcontractor is a small business concern.)

(a) Upon receipt of accelerated payments from the NREL/Government, the Contractor shall make accelerated payments to its small business Subcontractors under this subcontract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable subcontract or lower-tier subcontract, after receipt of a proper invoice and all other required documentation from the small business Subcontractor.

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

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

DIFFERING SITE CONDITIONS (APR 1984)
*Derived from **FAR 52.236-2***
(Applies to construction subcontracts.)

(a) The Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to the NREL Subcontract Administrator of—
  (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this subcontract; or
  (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the subcontract.

(b) The NREL Subcontract Administrator shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the work under this subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the subcontract modified in writing accordingly.

(c) No request by the Subcontractor for an equitable adjustment to the subcontract under this clause shall be allowed, unless the Subcontractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the NREL Subcontract Administrator.

(d) No request by the Subcontractor for an equitable adjustment to the subcontract for differing site conditions shall be allowed if made after final payment under this subcontract.

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
*Derived from **FAR 52.236-3***
(Applies to construction subcontracts.)

(a) The Subcontractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to—

(1) Conditions bearing upon transportation, disposal, handling, and storage of materials;
(2) The availability of labor, water, electric power, and roads;
(3) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
(4) The conformation and conditions of the ground; and
(5) The character of equipment and facilities needed preliminary to and during work performance.

The Subcontractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by NREL, as well as from the drawings and specifications made a part of this subcontract. Any failure of the Subcontractor to take the actions described and acknowledged in this paragraph will not relieve the Subcontractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to NREL.

(b) Neither NREL nor the Government assumes responsibility for any conclusions or interpretations made by the Subcontractor based on the information made available by NREL/Government. Nor does NREL/Government assume responsibility for any understanding reached or representation made concerning conditions that can affect the work by any of its officers or agents before the execution of this subcontract, unless that understanding or representation is expressly stated in this subcontract.

MATERIAL AND WORKMANSHIP (APR 1984)
*Derived from **FAR 52.236-5***
(Applies to construction subcontracts.)

(a) All equipment, material, and articles incorporated into the work covered by this subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgment of the NREL Subcontract Administrator, is equal to that named in the specifications, unless otherwise specifically provided in this subcontract.

(b) The Subcontractor shall obtain the NREL Subcontract Administrator's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor shall furnish to the NREL Subcontract Administrator the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this subcontract or by the NREL Subcontract Administrator, the Subcontractor shall also obtain the NREL Subcontract Administrator's approval of the material or articles which the Subcontractor contemplates incorporating into the work. When requesting approval, the Subcontractor shall provide full information concerning the material or articles. When directed to do so, the Subcontractor shall submit samples for approval, at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this subcontract shall be performed in a skillful and workmanlike manner. The NREL Subcontract Administrator may require, in writing, that the Subcontractor remove from the work any employee the NREL Subcontract Administrator deems incompetent, careless, or otherwise objectionable.

SUPERINTENDENCE BY THE SUBCONTRACTOR (APR 1984)
*Derived from **FAR 52.236-6***
(Applies to construction subcontracts.)
At all times during performance of this subcontract, and until the work is completed and accepted, the Subcontractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the NREL Subcontract Administrator and has authority to act for the Subcontractor.

PERMITS AND RESPONSIBILITIES (NOV 1991)
*Derived from **FAR 52.236-7***
(Applies to construction subcontracts.)
The Subcontractor shall, without additional expense to NREL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the subcontract.

OTHER CONTRACTS OR SUBCONTRACTS (APR 1984)
*Derived from **FAR 52.236-8***
(Applies to construction subcontracts.)
NREL/Government may undertake or award other contracts or subcontracts for additional work at or near the site of the work under this subcontract. The Subcontractor shall fully cooperate with the other Contractors or Subcontractors and with NREL/Government employees and shall carefully adapt scheduling and performing the work under this subcontract to accommodate the additional work, heeding any direction that may be provided by the NREL Subcontract Administrator or DOE Contracting Officer. The Subcontractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor, Subcontractor, or by NREL/Government employees.

OPERATIONS AND STORAGE AREAS (APR 1984)
*Derived from **FAR 52.236-10***
(Applies to construction subcontracts.)

(a) The Subcontractor shall confine all operations (including storage of materials) on NREL/Government-owned or -leased to areas authorized or approved by the NREL Subcontract Administrator. The Subcontractor shall hold and save NREL/Government, their officers and agents, free and harmless from liability of any nature occasioned by the Subcontractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Subcontractor only with the approval of the NREL Subcontract Administrator and shall be built with labor and materials furnished by the Subcontractor without expense to NREL. The temporary buildings and utilities shall remain the property of the Subcontractor and shall be removed by the Subcontractor at its expense upon completion of the work. With the written consent of the NREL Subcontract Administrator, the buildings and utilities may be abandoned and need not be removed.

(c) The Subcontractor shall, under regulations prescribed by the NREL Subcontract Administrator, use only established roadways, or use temporary roadways constructed by the Subcontractor when and as authorized by the NREL Subcontract Administrator. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Subcontractor shall protect them from damage. The Subcontractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
Derived from FAR 52.236-11
(Applies to construction subcontracts.)

(a) NREL shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the NREL Subcontract Administrator shall furnish the Subcontractor a list of items of work remaining to be performed or corrected on those portions of the work that NREL intends to take possession of or use. However, failure of the NREL Subcontract Administrator to list any item of work shall not relieve the Subcontractor of responsibility for complying with the terms of the subcontract. NREL's possession or use shall not be deemed an acceptance of any work under the subcontract.

(b) While NREL has such possession or use, the Subcontractor shall be relieved of the responsibility for the loss of or damage to the work resulting from NREL's possession or use, notwithstanding the terms of the clause in this subcontract entitled "Permits and Responsibilities." If prior possession or use by NREL delays the progress of the work or causes additional expense to the Subcontractor, an equitable adjustment shall be made in the subcontract price or the time of completion, and the subcontract shall be modified in writing accordingly.

CLEANING UP (APR 1984)
*Derived from **FAR 52.236-12***
(Applies to construction subcontracts.)
The Subcontractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Subcontractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of NREL/Government. Upon completing the work, the Subcontractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the NREL Subcontract Administrator.

ACCIDENT PREVENTION (SPECIAL) (OCT 2008)
*Derived from **FAR 52.236-13** (NOV 1991) (FD)*
(Applies to construction subcontracts.)

(a) The Subcontractor shall provide and maintain work environments and procedures which will—
  (1) Safeguard the public and NREL/Government personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities;
  (2) Avoid interruptions of NREL/Government operations and delays in project completion dates; and
  (3) Control costs in the performance of this subcontract.

(b) For these purposes, on subcontracts for construction or dismantling, demolition, or removal of improvements, the Subcontractor shall—
  (1) Provide appropriate safety barricades, signs, and signal lights;
  (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  (3) Ensure that any additional measures the NREL Subcontract Administrator determines to be reasonably necessary for the purposes are taken.

(c) Reserved.

(d) Whenever the NREL Subcontract Administrator becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the NREL Subcontract Administrator shall notify the Subcontractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Subcontractor or the Subcontractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails or refuses to take corrective action promptly, the NREL Subcontract Administrator may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Subcontractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance subcontract schedule on any stop work order issued under this clause.

(e) The Subcontractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in lower-tier subcontracts.

SUBCONTRACT SCHEDULES FOR CONSTRUCTION SUBCONTRACTS (APR 1984)
*Derived from **FAR 52.236-15** (APR 1984)*
Applies to construction subcontracts.

(a) The Subcontractor shall, within five days after the work commences on the subcontract or another period of time determined by the NREL Subcontract Administrator, prepare and submit to the NREL Subcontract Administrator for approval three copies of a practicable schedule showing the order in which the Subcontractor proposes to perform the work, and the dates on which the Subcontractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Subcontractor fails to submit a schedule within the time prescribed, the NREL Subcontract Administrator may withhold approval of progress payments until the Subcontractor submits the required schedule.

(b) The Subcontractor shall enter the actual progress on the chart as directed by the NREL Subcontract Administrator, and upon doing so shall immediately deliver three (3) copies of the annotated schedule to the NREL Subcontract Administrator. If, in the opinion of the NREL Subcontract Administrator, the Subcontractor falls behind the approved schedule, the Subcontractor shall take steps necessary to improve its progress, including those that may be required by the NREL Subcontract Administrator, without additional cost to NREL. In this circumstance, the NREL Subcontract Administrator may require the Subcontractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the NREL Subcontract Administrator deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Subcontractor to comply with the requirements of the NREL Subcontract Administrator under this clause shall be grounds for a determination by the NREL Subcontract Administrator that the Subcontractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the subcontract. Upon making this determination, the NREL Subcontract Administrator may terminate the Subcontractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this subcontract.

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997) AND ALTERNATE I (APR 1984)

*Derived from **FAR 52.236-21***

(Applies to construction subcontracts.)

(Alternate I applies when reproducible shop drawings are required.)

(a) The Subcontractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the NREL Subcontract Administrator access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference(s) between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, drawings, or specifications, the matter shall be promptly submitted to the NREL Subcontract Administrator, who shall promptly make a determination in writing. Any adjustment by the Subcontractor without such a determination shall be at its own risk and expense. The NREL Subcontract Administrator shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription" of the NREL Subcontract Administrator is intended and similarly the words "approved," "acceptable," satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the NREL Subcontract Administrator, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this subcontract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is, "furnished and installed."

(d) “Shop drawings” means drawings, submitted to NREL by the Subcontractor, or any lower-tier Subcontractor pursuant to a construction subcontract, showing in detail—

(1) The proposed fabrication and assembly of structural elements: and

(2) The installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, subcontract schedules, performance and test data, and similar materials furnished by the Subcontractor to explain in detail specific portions of the work required by the subcontract. NREL/Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this subcontract.

(e) If this subcontract requires shop drawings, the Subcontractor shall coordinate all such drawings and review them for accuracy, completeness, and compliance with subcontract requirements, and shall indicate approval thereon as evidence of such coordination and review. Shop drawings submitted to the NREL Subcontract Administrator without evidence of the Subcontractor's approval may be returned for resubmission. The NREL Subcontract Administrator will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate NREL's reasons; therefor, any work done before such approval shall be at the Subcontractor's risk. Approval by the NREL Subcontract Administrator shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this

subcontract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the subcontract requirements, the Subcontractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the NREL Subcontract Administrator approves any such variation, the NREL Subcontract Administrator shall issue an appropriate subcontract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Subcontractor shall submit to the NREL Subcontract Administrator for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three (3) sets (unless otherwise indicated) of all shop drawings will be retained by the NREL Subcontract Administrator and one set will be returned to the Subcontractor.

ALTERNATE I

When reproducible shop drawings are required, add the following sentences to paragraph (g) of the basic clause:

Upon completing the work under this subcontract, the Subcontractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

BANKRUPTCY (JUL 1995)
*Derived from **FAR 52.242-13***
(Applies to all subcontracts.)
In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the subcontract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of other NREL subcontract numbers and Government contract numbers and contracting offices for all NREL/Government subcontracts and contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

SUSPENSION OF WORK (APR 1984)
*Derived from **FAR 52.242-14***
(Applies to construction and architect-engineer subcontracts.)

(a) The NREL Subcontract Administrator may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the NREL Subcontract Administrator determines appropriate for the convenience of NREL/Government.

(b) If the performance of all or any part of the work is, for any unreasonable period of time, suspended, delayed, or interrupted—

(1) By an act of the NREL Subcontract Administrator in the administration of this subcontract; or

(2) By the NREL Subcontract Administrator's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this subcontract.

(c) A claim under this clause shall not be allowed—

(1) For any costs incurred more than twenty (20) days before the Subcontractor shall have notified the NREL Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

STOP WORK ORDER (AUG 1989) AND ALTERNATE I (APR 1984) (COST REIMBURSEMENT)

*Derived from **FAR 52.242-15** (AUG 1989)*
Applies to all subcontracts.
Alternate I applies to cost type subcontracts.

(a) The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by this subcontract for a period of up to ninety (90) days, as determined appropriate by the NREL Subcontract Administrator, 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 up to ninety (90) days, as determined appropriate by the NREL Subcontract Administrator, after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if—

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

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

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

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

ALTERNATE I (APR 1984)

If this clause is inserted in a cost reimbursement subcontract, substitute in paragraph (a) (2) the words, "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of NREL/Government clause of this subcontract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words, "an equitable adjustment in the delivery subcontract schedule or subcontract price, or both."

CHANGES (OCT 2011)
*Derived from **FAR 52.243-4** (JUN 2007)*
(Applies to fixed price construction subcontracts exceeding $150,000.)

(a) The NREL Subcontract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the subcontract, including changes—
  (1) In the specifications (including drawings and designs);
  (2) In the method or manner of performance of the work;
  (3) In the NREL/Government furnished property of services; or
  (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the NREL Subcontract Administrator that causes a change shall be treated as a change order under this clause, provided that the Subcontractor gives the NREL Subcontract Administrator written notice stating—
  (1) The date, circumstances, and source of the order; and
  (2) That the Subcontractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the NREL Subcontract Administrator shall be treated as a change under this clause or entitle the Subcontractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Subcontractor's cost of, or the time required for, the performance of any part of the work under this subcontract, whether or not changed by any such order, the NREL Subcontract Administrator shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than twenty (20) days before the Subcontractor gives written notice as required. In the case of defective specifications for which NREL/Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Subcontractor in attempting to comply with the defective specifications.

(e) The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days after—
  (1) Receipt of a written change order under paragraph (a) of this clause, or
  (2) The furnishing of a written notice under paragraph (b) of this clause, by submitting to the NREL Subcontract Administrator a written statement describing the general nature and amount of the proposal, unless this period is extended by NREL/Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Subcontractor for an equitable adjustment shall be allowed if asserted after final payment under this subcontract.

LOWER-TIER SUBCONTRACTS (OCT 2010) INCORPORATING ALTERNATE I (JUN 2007)
*Derived from **FAR 52.244-2** (OCT 2010)*
Applies to all cost type subcontracts. Applies to letter, fixed price, time and material, and labor hour subcontracts exceeding $150,000.

(a) Definitions.
- (1) "Approved purchasing system," as used in this clause, means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).
- (2) "Consent to lower-tier subcontract," as used in this clause, means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.
- (3) "Lower-tier subcontract," as used in this clause, means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier Subcontractor to furnish supplies or services for performance of the subcontract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed price type subcontract, consent to lower-tier subcontracts is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that—
- (1) Is of the cost reimbursement, time and materials, or labor hour type; or
- (2) Is fixed price and exceeds the simplified acquisition threshold or five (5) percent of the total estimated cost of the subcontract.

(d) If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator’s written consent before placing any of the lower-tier subcontracts identified in the subcontract schedule.

(e) (1) The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (ii) A description of the supplies or services to be lower-tier subcontracted.
- (iii) Identification of the type of lower-tier subcontract to be used.
- (iv) Identification of the proposed lower-tier Subcontractor.
- (v) The proposed lower-tier subcontract price.
- (vi) The lower-tier Subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
- (vii) The lower-tier Subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.
- (viii) A negotiation memorandum reflecting—
  - (A) The principal elements of the lower-tier subcontract price negotiations;
  - (B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;
(D) The extent, if any, to which the Subcontractor did not rely on the lower-tier Subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
(E) The extent to which it was recognized in the negotiation that the lower-tier Subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier Subcontractor; and the effect of any such defective data on the total price negotiated;
(F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Subcontractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Subcontractor nevertheless shall notify the NREL Subcontract Administrator reasonably in advance of entering into any:
(i) cost plus-fixed-fee subcontract, or
(ii) fixed price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1) (i) through (e)(1) (iv) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination—
(1) Of the acceptability of any lower-tier subcontract terms or conditions;
(2) Of the allowability of any cost under this subcontract; or
(3) To relieve the Subcontractor of any responsibility for performing this subcontract.

(g) No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost plus a percentage of cost basis, and any fee payable under cost reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier Subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.

(i) NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (d) and (f) of this clause do not apply to any of the lower-tier subcontracts identified in the subcontract schedule that were evaluated during negotiations.

LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2016)
*Derived from **FAR 52.244-6** (NOV 2017) (FD)*
(Applies to subcontracts for supplies or services other than commercial items.)

(a) Definitions. As used in this clause—
"Commercial item and commercially available off-the-shelf item" have the meanings contained Federal Acquisition Regulation 2.101, Definitions.
"Lower-tier Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or lower-tier subcontractors.

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

(c)

(1) The Subcontractor shall insert the following clauses in lower-tier subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the 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 NREL Subcontract Administrator.

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

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than 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) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the lower-tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(viii) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

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

(x) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xi) 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) 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 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiii) 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.

(xiv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xv)

(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.

(xvi) 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).

(xvii) 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.

(xviii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Subcontractor may flow down to lower-tier subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in lower-tier subcontracts awarded under this subcontract.

INSPECTION OF CONSTRUCTION (AUG 1996)
*Derived from **FAR 52.246-12***
(Applies to construction subcontracts.)

(a) Definition.
  (1) "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Subcontractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the subcontract conforms to subcontract requirements. The Subcontractor shall maintain complete inspection records and make them available to NREL/Government. All work shall be conducted under the general direction of the NREL Subcontract Administrator and is subject to NREL/Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the subcontract.

(c) NREL/Government inspections and tests are for the sole benefit of NREL/Government and do not—
  (1) Relieve the Subcontractor of responsibility for providing adequate quality control measures;
  (2) Relieve the Subcontractor of responsibility for damage to or loss of the material before acceptance;
  (3) Constitute or imply acceptance; or
  (4) Affect the continuing rights of NREL/Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a NREL/Government inspector does not relieve the Subcontractor from any subcontract requirement, nor is the inspector authorized to change any term or condition of the specification without the NREL Subcontract Administrator's written authorization.

(e) The Subcontractor shall promptly furnish, at no increase in subcontract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the NREL Subcontract Administrator. NREL may charge to the Subcontractor any additional cost of inspection or test when work is not ready at the time specified by the Subcontractor for inspection or test, or when prior rejection makes reinspection or retest necessary. NREL/Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full-size, and performance tests shall be performed as described in the subcontract.

(f) The Subcontractor shall, without charge, replace or correct work found by NREL/Government not to conform to subcontract requirements, unless in the public interest NREL/Government consents to accept the work with an appropriate adjustment in subcontract price. The Subcontractor shall promptly segregate and remove rejected material from the premises.

(g) If the Subcontractor does not promptly replace or correct rejected work, NREL may—
  (1) By subcontract or otherwise, replace or correct the work and charge the cost to the Subcontractor; or
  (2) Terminate for default the Subcontractor's right to proceed.

(h) If, before acceptance of the entire work, NREL/Government decides to examine already completed work by removing it or tearing it out, the Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Subcontractor or its lower-tier Subcontractors, the Subcontractor shall defray the

expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet subcontract requirements, the NREL Subcontract Administrator shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the subcontract, NREL shall accept, as promptly as practicable after completion and inspection, all work required by the subcontract or that portion of the work the NREL Subcontract Administrator determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or NREL's/Government's rights under any warranty or guarantee.

WARRANTY OF CONSTRUCTION (APR 1984) AND ALTERNATE I (APR 1984)
*Derived from **FAR 52.246-21***
(Applies to construction subcontracts.)
(Alternate I applies if NREL specifies in the subcontract the use of any equipment by "brand and model.")

(a) In addition to any other warranties in this subcontract, the Subcontractor warrants, except as provided in paragraph (j) of this clause, that work performed under this subcontract conforms to the subcontract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Subcontractor or any Subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of one (1) year from the date of final acceptance of the work. If NREL/Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one (1) year from the date NREL/Government takes possession.

(c) The Subcontractor shall remedy at the Subcontractor's expense any failure to conform, or any defect. In addition, the Subcontractor shall remedy at the Subcontractor's expense any damage to NREL/Government-owned or -controlled real or personal property, when that damage is the result of—
  (1) The Subcontractor's failure to conform to subcontract requirements; or
  (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Subcontractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Subcontractor's warranty, with respect to the work repaired or replaced, will run for one (1) year from the date of repair or replacement.

(e) The NREL Subcontract Administrator shall notify the Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Subcontractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, NREL/Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Subcontractor's expense.

(g) With respect to all warranties, express or implied, from lower-tier Subcontractors, manufacturers, or suppliers for work performed and materials furnished under this subcontract, the Subcontractor shall—
  (1) Obtain all warranties that would be given in normal commercial practice;
  (2) Require all warranties to be executed, in writing, for the benefit of NREL/Government, if directed by the NREL Subcontract Administrator; and
  (3) Enforce all warranties for the benefit of NREL/Government, if directed by the NREL Subcontract Administrator.

(h) In the event the Subcontractor's warranty under paragraph (b) of this clause has expired, NREL/Government may bring suit at its expense to enforce a lower-tier Subcontractor's, manufacturers, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Subcontractor or lower-tier Subcontractor or supplier at any tier, the Subcontractor shall not be liable for the repair of any defects of material or design furnished by NREL, nor for the repair of any damage that result from any defect in Government-furnished material or design.

(j) This warranty shall not limit NREL's/Government's rights under the Inspection and Acceptance clause of this subcontract with respect to latent defects, gross mistakes, or fraud.

ALTERNATE I (APR 1984)

If NREL specifies in the subcontract the use of any equipment by "brand and model," the following paragraph (k) shall be added to the basic clause:

(a) Defects in design or manufacture of equipment specified by NREL on a "brand name and model" basis shall not be included in this warranty. In this event, the Subcontractor shall require any lower-tier Subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to NREL/Government.

COMMERCIAL BILL OF LADING NOTATIONS (OCT 2009)
*Derived from **FAR 52.247-1** (FEB 2006) (FD)*
(Applies to all subcontracts where transportation is a direct charge to the subcontract.) (Direct and actual transportation cost is a separate item in the invoice (e.g. free on board (F.O.B.) origin) and not included in the delivered price (e.g. F.O.B. destination).
When the NREL Subcontract Administrator authorizes supplies to be shipped on a commercial bill of lading and the Subcontractor will be reimbursed these transportation costs as direct allowable costs, the Subcontractor shall ensure before shipment is made that the commercial shipping documents are annotated with the following notation:

> "Transportation is for the U.S. Department of Energy, acting through its National Renewable Energy Laboratory (NREL) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by NREL on behalf of the Government pursuant to cost reimbursement contract No. DE-AC36-08GO28308. This may be confirmed by contacting the DOE, Golden Service Center, 15013 Denver West Parkway, Golden, CO 80401."

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)
*Derived from **FAR 52.247-63** (FD)*
(Applies to subcontracts that involve international air transportation.)

(a) Definitions. As used in this clause—
  (1) "International air transportation," means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
  (2) "United States" means the 50 States, the District of Columbia, and outlying areas.
  (3) "U.S.-flag air carrier," means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 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.

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

(d) In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)
*Derived from **FAR 52.247-64** (FD)*
(Applies to subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
  (1) Acquired for a U.S. Government agency account;
  (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
  (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
  (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
    (ii) The NREL Subcontract Administrator, and
    (iii) The Office of Cargo Preference
    Maritime Administration (MAR-590)
    400 Seventh Street, SW
    Washington, DC 20590
    Lower-tier Subcontractor bills of lading shall be submitted through the Subcontractor.
  (2) The Subcontractor shall furnish these bill of lading copies
    (i) Within twenty (20) working days of the date of loading for shipments originating in the United States, or
    (ii) Within thirty (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.

(d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all lower-tier subcontracts or purchase orders under this subcontract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to—

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

(2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);

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

(4) Lower-tier subcontracts or purchase orders for the acquisition of commercial items unless—

(ii) This subcontract is—

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

(B) A construction subcontract; or

(iii) The supplies being transported are—

(A) Items the Subcontractor is reselling or distributing to the NREL/Government without adding value generally, the Subcontractor does not add value to the items when it lower-tier 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.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610

TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (SHORT FORM) (APR 1984)

*Derived from **FAR 52.249-1** (FD)*

(Applies to fixed price subcontracts of $100,000 or less, except subcontracts for research and development work with educational or nonprofit institutions and subcontracts for architect-engineer services.)

The NREL Subcontract Administrator, by written notice, may terminate this subcontract, in whole or in part, when it is in NREL's/Government's interest. If this subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this subcontract.

TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) (APR 2012) AND ALTERNATE I (SEP 19916) (CONSTRUCTION) (SPECIAL)
*Derived from **FAR 52.249-2** (APR 2012) and **Alternate I** (SEP 1996) (FD)*
(Applies to fixed price subcontracts exceeding the Simplified Acquisition Threshold, except subcontracts for dismantling and demolition, research and development work with an educational or nonprofit institution on a no-profit basis, or architect-engineering services.)
(Alternate I applies to fixed price construction subcontracts exceeding the Simplified Acquisition Threshold.)

(a) NREL may terminate performance of work under this subcontract in whole or, from time to time, in part if the NREL Subcontract Administrator determines that a termination is in NREL/the Government's interest. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the NREL Subcontract Administrator, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the subcontract;

(3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.

(4) Assign to NREL, as directed by the NREL Subcontract Administrator, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case NREL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the NREL Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the NREL Subcontract Administrator, transfer title to the Government and deliver to NREL—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to NREL/the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the NREL Subcontract Administrator may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which NREL/the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Government through the NREL Subcontract Administrator, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Subcontractor: (i) is not required to extend credit to any purchaser, and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Government acting through the NREL Subcontract Administrator. The proceeds of any transfer or disposition will be applied to

reduce any payments to be made by NREL under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the NREL Subcontract Administrator.

(c) The Subcontractor shall submit complete termination inventory subcontract schedules no later than 120 days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this 120-day period.

(d) [Reserved.]

(e) After termination, the Subcontractor shall submit a final termination settlement proposal to the NREL Subcontract Administrator in the form and with the certification prescribed by the NREL Subcontract Administrator. The Subcontractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator upon written request of the Subcontractor within this 1-year period. However, if the NREL Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the NREL Subcontract Administrator 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.

(f) Subject to paragraph (e) of this clause, the Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total subcontract price as reduced by (1) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be modified, and the Subcontractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Subcontractor and the NREL Subcontract Administrator fail to agree on the whole amount to be paid because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined by the NREL Subcontract Administrator as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The subcontract price for completed supplies or services accepted by NREL (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be

fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that NREL/the Government expressly assumed the risk of loss, the NREL Subcontract Administrator shall exclude from the amounts payable to the Subcontractor under paragraph (g) of this clause, the fair value, as determined by the NREL Subcontract Administrator, for the loss of NREL/the Government property.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the NREL Subcontract Administrator under paragraph (e), (g), or (l) of this clause, except that if the Subcontractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;

(2) Any claim which NREL/the Government has against the Subcontractor under this subcontract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to NREL/the Government.

(l) If the termination is partial, the Subcontractor may file a proposal with the NREL Subcontract Administrator for an equitable adjustment of the price(s) of the continued portion of the subcontract. The NREL Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the NREL Subcontract Administrator.

(m) (1) NREL/the Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the NREL Subcontract Administrator believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to NREL/the Government upon demand,

together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the NREL Subcontract Administrator because of the circumstances.

(n) Unless otherwise provided in this subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this subcontract for 3 years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to NREL/the Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the NREL Subcontract Administrator, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ALTERNATE I (SEP 1996)

If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Subcontractor and NREL Subcontract Administrator fail to agree on the whole amount to be paid the Subcontractor because of the termination of work, the NREL Subcontract Administrator shall pay the Subcontractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For subcontract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the NREL Subcontract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the NREL Subcontract Administrator shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

DEFAULT (FIXED PRICE CONSTRUCTION) (APR 1984)
*Derived from **FAR 52.249-10***
(Applies to fixed price construction subcontracts.)

(a) If the Subcontractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this subcontract including any extension, or fails to complete the work within this time, NREL may, by written notice to the Subcontractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, NREL may take over the work and complete it by subcontract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Subcontractor and its sureties shall be liable for any damage to NREL/Government resulting from the Subcontractor's refusal or failure to complete the work within the specified time, whether or not the Subcontractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by NREL/Government in completing the work.

(b) The Subcontractor's right to proceed shall not be terminated nor the Subcontractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include—

(i) Acts of God or of the public enemy;
(ii) Acts of the Government in either its sovereign or contractual capacity;
(iii) Acts of another Subcontractor in the performance of a subcontract with the Government;
(iv) Fires;
(v) Floods;
(vi) Epidemics,
(vii) Quarantine restrictions;
(viii) Strikes;
(ix) Freight embargoes;
(x) Unusually severe weather; or
(xi) Delays of lower-tier Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Subcontractor and the lower-tier Subcontractors or suppliers; and

(2) The Subcontractor, within ten (10) days from the beginning of any delay (unless extended by the NREL Subcontract Administrator), notifies the NREL Subcontract Administrator in writing of the causes of delay. The NREL Subcontract Administrator shall ascertain the facts and the extent of delay. If, in the judgment of the NREL Subcontract Administrator, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the NREL Subcontract Administrator shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Subcontractor's right to proceed, it is determined that the Subcontractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of NREL/Government.

(d) The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

EXCUSABLE DELAYS (APR 1984)
*Derived from **FAR 52.249-14** (APR 1984)*
Applies to cost type subcontracts for supplies, services, construction, and research and development on a fee basis. Also applies to time and materials, labor hour and expenses subcontracts.

(a) Except for defaults of Subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are—
  (1) Acts of God or of the public enemy;
  (2) Acts of the Government in either its sovereign or contractual capacity;
  (3) Fires;
  (4) Floods;
  (5) Epidemics;
  (6) Quarantine restrictions;
  (7) Strikes;
  (8) Freight embargoes; and
  (9) Unusually severe weather.

  In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier Subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless—
  (1) The lower-tier subcontracted supplies or services were obtainable from other sources;
  (2) The NREL Subcontract Administrator ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
  (3) The Subcontractor failed to comply reasonably with this order.

(c) Upon request of the Subcontractor, the NREL Subcontract Administrator shall ascertain the facts and extent of the failure. If the NREL Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery subcontract schedule shall be revised, subject to the rights of NREL/Government under the termination clause of this subcontract.

SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAR 2011)
*Derived from **DEAR 952.204-71** (MAR 2011) (FD)*
(Applies if the subcontract involves making unclassified information about nuclear technology available to sensitive foreign nations.)

(a) In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements 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 the NREL Subcontract Administrator if the Subcontractor determines that it is unable, without substantially interfering with its polices 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 the convenience of NREL/the Government shall apply.

(b) The provisions of this clause shall be included in any lower-tier subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.

PUBLIC AFFAIRS (DEC 2000) (SPECIAL OCT 2011)
*Derived from **DEAR 952.204-75** (DEC 2000)*
(Applies to subcontracts where the Subcontractor is required to release unclassified information related to NREL/DOE policies, programs, and activities.)

(a) The Subcontractor must cooperate with NREL in releasing general, non-technical information concerning the existence of this subcontract, the identity of the parties, and the character and scope of the Subcontractor's effort to the public and news media, including but not limited to NREL/DOE policies, programs, and activities. The responsibilities under this clause must be accomplished through coordination with the NREL Subcontract Administrator and appropriate NREL public affairs personnel prior to the release of general, non-technical information.

(b) The Subcontractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of general, non-technical information regarding NREL/DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Subcontractor's internal procedures must ensure that all releases of general, non-technical information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Subcontractor's organization.

(d) The Subcontractor must comply with the NREL Subcontract Administrator's direction for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, the Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the subcontract.

(f) The Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the subcontract.

(g) In releases of general, non-technical information to the public and news media, the Subcontractor must fully and accurately identify the Subcontractor's relationship to NREL/DOE and fully and accurately credit NREL/DOE for its role in funding programs and projects resulting in scientific, technical, and other achievements.

(h) The release or publication of information of a scientific or technical nature generated under this subcontract is governed by the provisions of Appendix C of this subcontract.

COMPUTER SECURITY (AUG 2006) (SPECIAL JAN 2019)
Derived from DEAR 952.204-77 (AUG 2006)
(Applies to all subcontracts where Subcontractor employees have access to computers owned, leased, or operated on behalf of DOE.)

(a) Definitions.
  (1) Computer means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.
  (2) Individual means an NREL/DOE [Sub]Contractor or lower-tier subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer and does not include a member of the public who sends an email message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) Access to DOE computers. A Subcontractor shall not allow an individual to have access to information on a DOE computer unless—
  (1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and
  (2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) 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 computer shall have any expectation of privacy in the use of that computer.

(d) Written records. The Subcontractor is responsible for maintaining written records for itself and lower-tier subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Subcontractor agrees to provide access to these records to the DOE, its authorized agents, or the NREL Subcontract Administrator upon request.

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

COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)
*Derived from **DEAR 970.5225-1** (NOV 2015)*
(Applies to all subcontracts.)

(a) The Subcontractor shall comply with all applicable U.S. export control laws and regulations.

(b) 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.

(c) 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—

(1) The Atomic Energy Act of 1954, as amended;
(2) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);
(3) 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.*);
(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);
(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);
(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);
(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);
(8) Export Administration Regulations (EAR) (15 CFR parts 730 through 774); and
(9) Regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598).

(d) 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.

(e) The Subcontractor shall include the substance of this clause, including this paragraph (e), in all solicitations and lower-tier subcontracts.

ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010) WITH ALERNATE I (DEC 2000)
Derived from DEAR 970.5232-3
(Applies to subcontracts that include FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data-Modifications.)

(a) Accounts. The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, negotiated fixed amounts, and fee accruals under this subcontract; and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to NREL and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this subcontract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause 970.5204-3, Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Subcontractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of Subcontractors' records. The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed-price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor of any tier, to either conduct an audit of the lower-tier Subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the NREL Subcontract Administrator.

(d) Disposition of records. Except as agreed upon by NREL/Government and the Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, and fee accruals under this subcontract, shall be the property of the Government, and shall be delivered to NREL/Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator/Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator/Contracting Officer shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this subcontract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.

(e) Reports. The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator/Contracting Officer may from time to time require.

(f) Inspections. The DOE/NREL shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.

(g) Lower-tier Subcontracts. The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier Subcontractor.

(h) Comptroller general.

(1) 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 or lower-tier Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder and to interview any current employee regarding such transactions.

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

(3) Nothing in this subcontract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this subcontract.

(i) Internal audit. The Subcontractor agrees to design and maintain an internal audit plan and an internal audit organization.

(1) Upon subcontract award, the exercise of any subcontract option, or the extension of the subcontract, the Subcontractor must submit to the NREL Subcontract Administrator for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—

(i) The internal audit organization's placement within the Subcontractor's organization and its reporting requirements;

(ii) The audit organization's size and the experience and educational standards of its staff;

(iii) The audit organization's relationship to the corporate entities of the Subcontractor;

(iv) The standards to be used in conducting the internal audits;

(v) The overall internal audit strategy of this subcontract, considering particularly the method of auditing costs incurred in the performance of the subcontract;

(vi) The intended use of external audit resources;

(vii) The plan for audit of lower-tier subcontracts, both pre-award and post-award; and

(viii) The schedule for peer review of internal audits by other Subcontractor internal audit organizations, or other independent third party audit entities approved by the NREL Subcontract Administrator.

(2) By each January 31 of the subcontract performance period, the Subcontractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the Subcontractor's system of business, financial, or management controls.

(3) By each June 30 of the subcontract performance period, the Subcontractor must submit to the NREL Subcontract Administrator an annual audit plan for the activities to be undertaken by the internal audit organization during the

next fiscal year that is designed to test the costs incurred and Subcontractor management systems described in the internal audit design.

(4) The NREL Subcontract Administrator may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

(j) Remedies. If at any time during subcontract performance, the NREL Subcontract Administrator determines that unallowable costs were claimed by the Subcontractor to the extent of making the Subcontractor's management controls suspect, or the Subcontractor's management systems that validate costs incurred and claimed suspect, the NREL Subcontract Administrator may, in his or her sole discretion, require the Subcontractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the NREL Subcontract Administrator, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the Subcontractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this subcontract.

Alternate I (DEC 2000). As prescribed in 970.3270(a)(2), if the subcontract includes the clause at 48 CFR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications, the basic clause shall be modified as follows:

(a) Paragraph (a) of the basic clause shall be modified by adding the words “or anticipated to be incurred” after the words “allowable costs incurred.”

(g) Paragraph (g) of the basic clause shall be modified by adding the following: The Subcontractor further agrees to include an “Audit” clause, the substance of which is the “Audit” clause set forth at 48 CFR 52.215-2, in each lower-tier subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (h) of this clause, but which contains a “defective cost or pricing data” clause.

PROPERTY (SPECIAL) (AUG 2016)
*Derived from **DEAR 970.5245-1** (AUG 2016) and **Alternate I** (AUG 2016) (FD)*
(Applies to all subcontracts where Government Property is to be furnished to or acquired by the Subcontractor.)
(*Alternate I applies if the Subcontractor is a non-profit Subcontractor*.)

(a) *Furnishing of Government property*. NREL/The Government reserves the right to furnish any property or services required for the performance of the work under this subcontract.

(b) *Title to property.* Except as otherwise provided by the NREL Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. NREL/The Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon

(1) Issuance for use of such property in the performance of this subcontract, or
(2) Commencement of processing or use of such property in the performance of this subcontract, or
(3) Property furnished by NREL/the Government and property purchased or furnished by the Subcontractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the NREL Subcontract Administrator, the Subcontractor shall identify Government property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the NREL Subcontract Administrator, as shall indicate its ownership by the Government.

(d) *Disposition.* The Subcontractor shall make such disposition of Government property which has come into the possession or custody of the Subcontractor under this subcontract as the NREL Subcontract Administrator may direct during the progress of the work or upon completion or termination of this subcontract. The Subcontractor may, upon such terms and conditions as the NREL Subcontract Administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Government through the NREL Subcontract Administrator and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition, or the agreed fair value of any such property acquired by the Subcontractor, shall be applied in reduction of costs allowable under this subcontract or shall be otherwise credited to account to NREL/the Government, as the NREL Subcontract Administrator may direct. Upon completion of the work or the termination of this subcontract, the Subcontractor shall render an accounting, as prescribed by the NREL Subcontract Administrator, of all Government property which had come into the possession or custody of the Subcontractor under this subcontract.

(e) *Protection of government property—management of high-risk property and classified materials.*

(1) The Subcontractor shall take all reasonable precautions, and such other actions as may be directed by the NREL Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Subcontractor's possession or custody.

(2) In addition, the Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.*

(1)

(i) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following—

(A) Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel;

(B) Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the NREL Subcontract Administrator to safeguard such property under paragraph (e) of this clause; or

(C) Failure of Subcontractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the NREL Subcontract Administrator informs the Subcontractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Subcontractor to show that the Subcontractor should not be required to compensate NREL/the Government for the loss, destruction, or damage.

(2) In the event that the Subcontractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Subcontractor's compensation to NREL/the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Government through the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Government through the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Subcontractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Subcontractor with a value above the threshold set out in the Subcontractor's approved property management system, the Subcontractor —

(1) Shall immediately inform the NREL Subcontract Administrator of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the NREL Subcontract Administrator. The Subcontractor shall take no action prejudicial to the right of NREL/the Government to recover therefore, and shall furnish to NREL/the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for* NREL/*Government use only.* Government property shall be used only for the performance of this subcontract.

(i) *Property Management—*

(1) *Property Management System.*

The Subcontractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the subcontract. The Subcontractor's property management system shall be submitted to the NREL Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the NREL Subcontract Administrator may from time to time prescribe.

(i) In order for a property management system to be approved, it must provide for—

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) [Reserved]

(C) Full integration with the Subcontractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Subcontractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) *Property Inventory.*

(i) Unless otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall within six months after execution of the subcontract provide a baseline inventory covering all items of Government property.

(ii) If the Subcontractor is succeeding another Subcontractor in the performance of this subcontract, the Subcontractor shall conduct a joint reconciliation of the property inventory with the predecessor Subcontractor. The Subcontractor agrees to participate in a joint reconciliation of the property inventory at the completion of this subcontract. This information will be used to

provide a baseline for the succeeding subcontract as well as information for closeout of the predecessor subcontract.

(j) The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Subcontractor's business; or

(2) All or substantially all of the Subcontractor's operations at any one facility or separate location to which this subcontract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this subcontract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this subcontract; or

(5) A separate and discrete major task or operation in connection with the performance of this subcontract.

(k) The Subcontractor shall include this clause in all cost reimbursable lower-tier subcontracts.

ALTERNATE I (AUG 2016)

If the Subcontractor is a non-profit Subcontractor replace paragraph (j) of the basic clause with the following paragraph (j):

(j) The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of—

(1) The Subcontractor's business; or

(2) The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or

(3) The Subcontractor's property system and/or a Major System Project as defined in DOE Order 413.3B, or successor version (Version in effect on effective date of subcontract).

CONSTRUCTION WAGE RATE REQUIREMENTS (AUG 2018) (FORMERLY DAVIS-BACON ACT)

*Derived from **FAR 52.222-6** (AUG 2018) (FD)*

(Applies to construction subcontracts exceeding $2,000.)

(a) Definition.— "Site of the work"—

(1) Means—

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

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

(A) Located in the United States; and

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

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

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

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

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

(b)

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

between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

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

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

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

(c)

The NREL Subcontract Administrator shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the subcontract shall be classified in conformance with the wage determination. The NREL Subcontract Administrator shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

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

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

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

If the Subcontractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the NREL Subcontract Administrator agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the NREL Subcontract Administrator through the DOE Contracting Officer to the Administrator of the:

Wage and Hour Division
U.S. Department of Labor
Washington, DC 20210

(2) The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the NREL Subcontract Administrator or will notify the NREL

Subcontract Administrator within the 30-day period that additional time is necessary.

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

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

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

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

WITHHOLDING OF FUNDS (MAY 2014)
*Derived from **FAR 52.222-7** (MAY 2014) (FD)*
Applies to construction subcontracts exceeding $2,000.
The NREL Subcontract Administrator through the Department of Energy (DOE) Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subcontractor under this subcontract or any other Federal subcontract or contract with the same Subcontractor, or any other federally assisted subcontract or contract subject to prevailing wage requirements, which is held by the same Subcontractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subcontractor or any lower-tier subcontractor the full amount of wages required by the subcontract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the subcontract, the NREL Subcontract Administrator may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

PAYROLLS AND BASIC RECORDS (AUG 2018) (SPECIAL DEC 2018)
*Derived from **FAR 52.222-8** (AUG 2018)*
(Applies to construction subcontracts exceeding $2,000.)

(a) Payrolls and basic records relating thereto shall be maintained by the Subcontractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B)(Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)

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

(1) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subcontractor or lower-tier subcontractor or his

or her agent who pays or supervises the payment of the persons employed under the subcontract and shall certify-

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

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

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

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

(2) The falsification of any of the certifications in this clause may subject the Subcontractor or lower-tier subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

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

APPRENTICES AND TRAINEES (JUL 2005)
*Derived from **FAR 52.222-9***
(Applies to construction subcontracts exceeding $2,000.)

(a) Apprentices.

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

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

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

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

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

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

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

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

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are

employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

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

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

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

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
*Derived from **FAR 52.222-10** (FEB 1988)*
(Applies to construction subcontracts exceeding $2,000.)
The Subcontractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this subcontract.

LOWER-TIER SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)
*Derived from **FAR 52.222-11** (MAY 2014) (FD)*
(Applies to construction subcontracts exceeding $2,000.)

(a) Definition. "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction subcontractor or construction lower-tier subcontractor on a particular building or work at the site thereof, including without limitation-
  (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
  (2) Painting and decorating;
  (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
  (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this subcontract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and
  (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Subcontractor shall insert in any lower-tier subcontracts for construction, alterations and repairs within the United States the clauses entitled-
  (1) Construction Wage Rate Requirements;
  (2) Contract Work Hours and Safety Standards-Overtime Compensation (if the clause is included in this subcontract);
  (3) Apprentices and Trainees;
  (4) Payrolls and Basic Records;
  (5) Compliance with Copeland Act Requirements;
  (6) Withholding of Funds;
  (7) Subcontracts (Labor Standards);
  (8) Contract Termination-Debarment;
  (9) Disputes Concerning Labor Standards;
  (10) Compliance with Construction Wage Rate Requirements and Related Regulations; and
  (11) Certification of Eligibility.

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

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

(2) Within 14 days after the award of any subsequently awarded lower-tier subcontract the Subcontractor shall deliver to the NREL Subcontract Administrator an updated completed SF 1413 for such additional lower-tier or sub-tier subcontract.

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

SUBCONTRACT TERMINATION--DEBARMENT (MAY 2014)
*Derived from **FAR 52.222-12** (MAY 2014)*
(Applies to construction subcontracts exceeding $2,000.)
A breach of the subcontract clauses entitled Construction Wage Rate Requirements (formerly Davis-Bacon Act); Contract Work Hours and Safety Standards Act--Overtime Compensation; Apprentices and Trainees; Payrolls and Basic Records; Compliance with Copeland Act Requirements; Lower-Tier Subcontracts (Labor Standards); Compliance with Construction Wage Rate Requirements (formerly Davis-Bacon Act) and Related Act Regulations, or Certification of Eligibility, may be grounds for termination of the subcontract, and for debarment as a Federal contractor and Subcontractor or lower-tier Subcontractor as provided in 29 CFR 5.12.

COMPLIANCE WITH CONSTRUCTION WAGE RATE (FORMERLY DAVIS-BACON ACT) REQUIREMENTS AND RELATED ACT REGULATIONS (MAY 2014)
*Derived from **FAR 52.222-13** (MAY 2014)*
(Applies to construction subcontracts exceeding $2,000.)
All rulings and interpretations of the Construction Wage Rate Requirements statute and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this subcontract.

DISPUTES CONCERNING LABOR STANDARDS (FEB 1988) (SPECIAL DEC 2018)
*Derived from **FAR 52.222-14** (FEB 1988)*
(Applies to construction subcontracts exceeding $2,000.)
The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this subcontract. Disputes within the meaning of this clause includes disputes between the Subcontractor (or any of its lower-tier subcontractors) and NREL, the U.S. Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

CERTIFICATION OF ELIGIBILITY (MAY 2014)
*Derived from **FAR 52.222-15** (MAY 2014)*
(Applies to construction subcontracts exceeding $2,000.)

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

(b) No part of this subcontract shall be subcontracted, at any tier, to any person or firm ineligible for award of a Government contract or subcontract by virtue of 40 U.S.C. 3144(b)(2) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

Employment Eligibility Verification (OCT 2015) (SPECIAL JAN 2019)
Derived from FAR 52.222-54 (OCT 2015) (FD)
Applies to all subcontracts that exceed $3,500 and includes work performed in the United States.

(a) Definitions. As used in this clause—
"Commercially available off-the-shelf (COTS) item"—
(1) Means any item of supply that is—
(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to NREL/the Government, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in 46 U.S.C. 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.
"Employee assigned to the subcontract" means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a subcontract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a subcontract if the employee—
(1) Normally performs support work, such as indirect or overhead functions; and
(2) Does not perform any substantial duties applicable to the subcontract.
"Contractor" or "DOE Prime Contractor" means the entity managing and operating the National Renewable Energy Laboratory under prime contract to the U.S. Department of Energy (DOE). The National Renewable Energy Laboratory (NREL) is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
"Lower-tier Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a Subcontractor or another lower-tier Subcontractor.
"Subcontract" means any subcontract, as defined in 2.101, entered into by a lower-tier subcontractor to furnish supplies or services for performance of a prime subcontract or a lower-tier subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
(1) "United States," as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.
(1) If the Subcontractor is not enrolled as a Federal [Sub]Contractor in E-Verify at time of subcontract award, the Subcontractor shall—
(i) Enroll. Enroll as a Federal [Sub]Contractor in the E-Verify program within 30 calendar days of subcontract award;
(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the subcontract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) Verify employees assigned to the subcontract. For each employee assigned to the subcontract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Subcontractor is enrolled as a Federal [Sub]Contractor in E-Verify at time of subcontract award, the Subcontractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

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

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

(ii) Employees assigned to the subcontract. For each employee assigned to the subcontract, the Subcontractor shall initiate verification within 90 calendar days after date of subcontract award or within 30 days after assignment to the subcontract, whichever date is later (but see paragraph (b)(4) of this section).

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 or NREL pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the subcontract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the subcontract.

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

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

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

(4) The Subcontractor shall comply, for the period of performance of this subcontract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify.

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

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

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and [Sub]Contractors.

(e) Lower-tier Subcontracts. The Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each lower-tier subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (SPECIAL NOV 2016)

*Derived from **FAR 52.222-40** (DEC 2010)*

Applies to all subcontracts exceeding $10,000 that will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor pursuant to section 3 of Executive Order 13496 of January 30,2009.

(a) During the term of this subcontract, the Subcontractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the 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).

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

(2) If the Subcontractor customarily posts notices to employees electronically, then the Subcontractor shall also post the required notice electronically by displaying prominently, on any 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 (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

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

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, 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;

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

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

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

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

(e) In the event that the Subcontractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause or otherwise acts in violation of the National Labor Relations Act, NREL shall have the right to terminate this subcontract in whole or in part in accordance with the termination clause of this subcontract, and the Subcontractor may be suspended or debarred by the Department of Energy in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Lower-tier subcontracts.

(1) The Subcontractor shall include the substance of this clause, including this paragraph (f), in every lower-tier 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 lower-tier subcontractor.

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

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

(4) However, if the Subcontractor becomes involved in litigation with a lower-tier 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.

ENCOURAGING SUBCONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

*Derived from **FAR 52.223-18** (AUG 2011)*

(Applies to subcontracts exceeding the micro-purchase threshold.)

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

"Driving"—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

"Text messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Subcontractor is encouraged to—

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

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

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

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Lower-tier subcontracts. The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all lower-tier subcontracts that exceed the micro-purchase threshold.

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)
*Derived from **FAR 52.222-36** (JUL 2014) (FD)*
(Applies to all subcontracts exceeding $15,000.)

(a) *Equal opportunity clause.* The Subcontractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Subcontractor to employ and advance in employment qualified individuals with disabilities.

(b) *Lower-Tier Subcontracts.* The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each lower-tier 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.

DUTY-FREE ENTRY (OCT 2010)
*Derived from **FAR 52.225-8** (OCT 2010) (FD)*
(Applies to subcontracts where supplies to be accorded duty-free entry will be imported into the customs territory of the United States, or other foreign supplies in excess of $15,000 may be imported into the customs territory of the United States.)

(a) *Definition.* "Customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the NREL Subcontract Administrator, the Subcontractor shall not include in the subcontract price any amount for duties on supplies specifically identified in the subcontract schedule to be accorded duty-free entry.

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

(1) The Subcontractor shall notify the NREL Subcontract Administrator 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 NREL/the Government under this subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the NREL Subcontract Administrator 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.

(2) The NREL Subcontract Administrator 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.

(3) Except as otherwise approved by the NREL Subcontract Administrator, 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.

(d) The Subcontractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if--

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

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

(e) The Subcontractor shall claim duty-free entry only for supplies to be delivered to NREL/the Government 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 the NREL Subcontract Administrator, diverted to nongovernmental use.

(f) NREL/the Government 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.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to NREL/DOE in care of the Subcontractor and shall include the--

(1) Delivery address of the Subcontractor (or NREL/DOE, if appropriate);

(2) NREL's DOE prime contract number and the NREL subcontract number;

(3) Identification of carrier;

(4) Notation "UNITED STATES GOVERNMENT, _____ [*agency*], _____ Duty-free entry to be claimed pursuant to Item No(s) _____ [*from Tariff* subcontract

schedules] _____, Harmonized Tariff subcontract 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* subcontract *administration office*] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";

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

(6) Estimated value in United States dollars.

(h) The Subcontractor shall instruct the foreign supplier to--

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words “UNITED STATES GOVERNMENT" and “NREL/DOE”; and

(3) 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.

(i) The Subcontractor shall provide written notice to the NREL Subcontract Administrator immediately after notification by the NREL Subcontract Administrator that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the subcontract schedule, upon award by the Subcontractor to the overseas supplier. The notice shall identify the--

(1) Foreign supplies;

(2) Country of origin;

(3) Subcontract number; and

(4) Subcontract schedule delivery date(s).

(j) The Subcontractor shall include the substance of this clause in any lower-tier subcontract if--

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

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

PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

*Derived from **FAR 52.209-6** (OCT 2015) (FD)*

(Applies to all subcontracts with lower-tier subcontracts exceeding $35,000)

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

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

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

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

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

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

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Subcontractor shall not enter into any lower-tier subcontract in excess of $35,000 with a lower-tier Subcontractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Subcontractor shall require each proposed lower-tier Subcontractor, whose lower-tier subcontract will exceed $35,000, other than a lower-tier Subcontractor providing a commercially available off-the-shelf item, to disclose to the lower-tier Subcontractor, in writing, whether as of the time of award of the lower-tier subcontract, the lower-tier Subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Subcontractor shall notify the NREL Subcontract Administrator, in writing, before entering into a lower-tier subcontract with a party (other than a lower-tier 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:

(1) The name of the lower-tier Subcontractor.

(2) The Subcontractor's knowledge of the reasons for the lower-tier Subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the lower-tier Subcontractor notwithstanding its being listed with an exclusion in SAM.

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

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

(1) Exceeds $35,000 in value; and

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

RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (NREL 2019)

*Derived from **FAR 52.203-6** (SEP 2006) (FD)*

(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

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

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

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

ANTI-KICKBACK PROCEDURES (NOV 2019)
*Derived from **FAR 52.203-7** (MAY 2014) (FD)*
(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(a) *Definitions*.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any Subcontractor, Subcontractor employee, lower-tier Subcontractor, or lower-tier Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a subcontract or in connection with a lower-tier subcontract relating to a subcontract.

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

"Subcontract," as used in this clause, means a subcontract or contractual action entered into by the National Renewable Energy Laboratory (NREL) for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Subcontractor," as used in this clause, means a person who has entered into a subcontract with the NREL.

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

"Lower-tier Subcontract," as used in this clause, means a lower-tier subcontract or contractual action entered into by a Subcontractor or lower-tier Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a subcontract.

"Lower-tier Subcontractor," as used in this clause,

(1) means any person, other than the Subcontractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a subcontract or a lower-tier subcontract entered into in connection with such subcontract, and

(2) includes any person who offers to furnish or furnishes general supplies to the Subcontractor or a Prime Contractor.

"Lower-tier Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a lower-tier Subcontractor.

(b) The 41 U.S.C. Chapter 87, Kickbacks, prohibits any person from

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

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

(3) Including, directly or indirectly, the amount of any kickback in the subcontract price charged by a Subcontractor to NREL or in the lower-tier subcontract price charged by a lower-tier Subcontractor to a Subcontractor or a Prime Contractor.

(c)

(1) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) 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 Department of Energy (DOE), the head of the DOE if the agency does not have an inspector general, or the Attorney General.

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

(4) The NREL Subcontract Administrator may

(i) offset the amount of the kickback against any monies owed by NREL under the subcontract; and/or

(ii) direct that the Subcontractor withhold from sums owed the lower-tier Subcontractor under the subcontract the amount of the kickback. The NREL Subcontract Administrator may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.

(5) The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all lower-tier subcontracts under this subcontract which exceed $150,000.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (NOV 2019)

*Derived from **FAR 52.203-12** (OCT 2010) (FD)*

(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(a) Definitions. As used in this clause—

(1) "Agency," as used in this clause, means "executive agency" as defined in Federal Acquisition Regulation (FAR) 2.101.

(2) "Covered Federal action," as used in this clause, means any of the following actions:

(i) The awarding of any Federal contract or at any-tier.

(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 contract or a subcontract at any-tier, grant, loan, or cooperative agreement.

(3) "Indian Tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

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

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

(6) "Officer or employee of an agency," as used in this clause, includes 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.

(7) "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, subcontracts at any-tier, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for

purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

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

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

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

(11) "Regularly employed," as used in this clause means, with respect to an officer or employee of a person requesting or receiving a Federal contract or subcontract at any-tier, an officer or employee who is employed by such person for at least one hundred thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract or subcontract at any-tier. An officer or employee who is employed by such person for less than one hundred thirty (130) working days within one (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 one hundred thirty (130) working days.

(12) "State," as used in this clause means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

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

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

(2) To the extent the Subcontractor or lower-tier Subcontractor can demonstrate that the Subcontractor or lower-tier Subcontractor has sufficient monies, other than Federal appropriated funds, NREL/Government will assume that these

other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

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

(2) Agency and legislative liaison by Subcontractor or lower-tier Subcontractor employees.

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

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

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

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

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

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

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

(3) Professional and technical services.

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

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c) (2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any

professional or technical discipline (for examples, see FAR 3.803(a)(2) (iii)).

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

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

(d) Disclosure.

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

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

(e) Penalties.

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

(2) Subcontractors or lower-tier Subcontractors may rely without liability on the representation made by their lower-tier Subcontractors in the certification and disclosure form.

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

(g) Lower-tier Subcontracts.

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

(2) A copy of each lower-tier Subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor, at any-tier, submit to the NREL Subcontract Administrator within thirty (30) days a copy

of all disclosures. Each lower-tier Subcontractor certification shall be retained in the subcontract file.

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

SUBCONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)

*Derived from **FAR 52.203-17** (APR 2014)*

Applies to all subcontracts over the Simplified Acquisition Threshold.

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

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

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

PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (NOV 2019)

*Derived from **FAR 52.203-19** (JAN 2017) (FD)*

(Applies to all subcontracts over the Simplified Acquisition Threshold and requiring a confidentiality agreement.)

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

"Internal confidentiality agreement or statement" means a confidentiality agreement or any other written statement that the Subcontractor requires any of its employees or subcontractors to sign regarding nondisclosure of Subcontractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that Subcontractor employees or lower-tier subcontractors sign at the behest of a Federal agency.

"Lower-Tier Subcontract" means any contract as defined in subpart 2.1 entered into by a lower-tier 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.

"Lower-Tier Subcontractor" means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a subcontractor or another lower-tier subcontractor.

(b) The Subcontractor shall not require its employees or lower-tier subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or lower-tier subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of an NREL contract to a designated investigative or law enforcement representative of NREL authorized to receive such information (e.g., the NREL Subcontract Administrator).

(c) The Subcontractor shall notify current employees and lower-tier subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the NREL Subcontract Administrator determines that the Subcontractor is not in compliance with the provisions of this clause.

(f) The Subcontractor shall include the substance of this clause, including this paragraph (f), in lower-tier subcontracts under such contracts.

PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (NOV 2019)
*Derived from **FAR 52.204-4** (MAY 2011)*
(Applies to all subcontracts exceeding the Simplified Acquisition Threshold.)

(a) Definitions. As used in this clause—

(1) "Postconsumer fiber"

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

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

(iii) Fiber derived from printers' over-runs, converter's scrap, and over-issue publications.

(b) When not using electronic commerce methods to submit information or data to NREL/Government, the Subcontractor is required to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper containing at least thirty (30) percent postconsumer fiber.

LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

Derived from FAR 52.215-23 (OCT 2009)

Applies to all cost-reimbursement subcontracts exceeding the Simplified Acquisition Threshold.

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

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

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

"No or negligible value" means the Subcontractor or lower-tier subcontractor cannot demonstrate to the NREL Subcontract Administrator that its effort added value to the subcontract or lower-tier subcontract in accomplishing the work performed under the subcontract (including task or delivery orders).

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

"Lower-Tier Subcontractor" and "Sub-Tier Subcontractor," as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Subcontractor or another subcontractor at any tier.

(b) *General*. NREL/the Government will not pay excessive pass-through charges. The NREL/Subcontract Administrator shall determine if excessive pass-through charges exist.

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

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

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

(d) *Recovery of excessive pass-through charges*. If the NREL Subcontract Administrator determines that excessive pass-through charges exist as directed by the DOE Contracting Officer;

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

(2) [Reserved.]

(e) *Access to records*.

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

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

(f) *Flowdown*. The Subcontractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement lower-tier subcontracts under this subcontract that exceeds the simplified acquisition threshold.

EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
*Derived from **FAR 52.222-35** (OCT 2015) (FD)*
(Applies to all subcontracts exceeding $150,000.)

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

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

(c) Lower-tier Subcontracts. The Subcontractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the NREL Subcontract Administrator, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate of identify properly the parties and their undertakings.

EMPLOYMENT REPORTS ON VETERANS (FEB 2016)
*Derived from **FAR 52.222-37** (FEB 2016) (FD)*
(Applies to all subcontracts exceeding $150,000.)

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

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

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

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

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

(c) The Subcontractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at http://www.dol.gov/vets/vets4212.htm).

(d) The Subcontractor shall file VETS-4212 Reports no later than September 30 of each year.

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

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

(2) As of December 31, if the 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).

(f) 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.

(g) The Subcontractor shall insert the terms of this clause in all lower-tier subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)
*Derived from **DEAR 952.226-74** (FD)*
(Applies to all subcontracts exceeding $500,000, except subcontracts for commercial items.)

(a) Definition.
Eligible employee means a current or former employee of a Contractor or Subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) 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 (3) who is qualified for a particular job vacancy with the Department or one of its Contractors or Subcontractors with respect to work under its Contract with the Department at the time the particular position is available.

(b) 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.

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

SECURITY AND ACCESS REQUIREMENTS (SPECIAL) (DEC 2018)
*Derived from **NREL 08.100-02***
(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

(a) Security requirements.
  (1) NREL has established security requirements to govern access onto NREL operated facilities or government-owned or –leased properties (here after "NREL operated facilities") by the Subcontractor's employees (and its lower-tier Subcontractors' employees), officers, agents, and any other persons representing the Subcontractor.
    (i) The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or -leased property are closed to all hunting.
  (2) As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
  (3) The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.
  (4) The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost–time accidents and ambulance runs, occurring under this subcontract.
  (5) NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE security policies and procedures.

(b) Access requirements for U.S. citizens.
  (1) Access to NREL operated facilities is controlled in accordance with DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.

(c) Access requirements for persons who are not U.S. citizens.
  (1) The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier Subcontractors' employees), officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the

requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.

(2) Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a federal background check. This process requires a minimum of 30 calendar days notification prior to visit or assignment. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will not be allowed. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."

(ii) It is the Subcontractor's responsibility to obtain and provide all necessary information and documentation to meet NREL, DOE, and federal requirements regarding Subcontractors' employees (or its lower-tier Subcontractors' employees), officers', and agents' work authorization and identification to the NREL Technical Monitor and the NREL Subcontract Administrator to meet the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

(3) Prior to the initiation of a subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Citizenship and Immigration Services. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.

(4) After the Subcontractor (and its lower-tier Subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.

(d) Access Requirements for all persons.

(1) All persons entering NREL operated facilities must display a valid NREL– or DOE– issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier Subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.

(2) The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities is controlled on a 24-hour, 7-day per week basis.

(3) The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that

the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (MAR 2020)
*Derived from **NREL 09.100-02***
(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will perform work on NREL-operated facilities or government-owned or -leased properties.)

(a) **THE SUBCONTRACTOR SHALL BE RESPONSIBLE TO ENSURE THAT ALL WORK PERFORMED UNDER THIS SUBCONTRACT (INCLUSIVE OF LOWER-TIER SUBCONTRACTORS) IS PERFORMED IN ACCORDANCE WITH THE DEPARTMENT OF ENERGY'S "WORKER SAFETY AND HEALTH" RULE CODIFIED AT 10 CFR 851. THE SUBCONTRACTOR SHALL ENSURE THAT ALL WORK IS PERFORMED IN ACCORDANCE WITH NREL'S DOE-APPROVED SAFETY MANAGEMENT SYSTEM, INCLUDING, BUT NOT LIMITED TO, THE MOST CURRENT REQUIREMENTS SET FORTH IN THE APPLICABLE NREL "SERVICE AND MAINTENANCE SUBCONTRACTOR ENVIRONMENT, SAFETY & HEALTH MANUAL" OR "CONSTRUCTION ENVIRONMENT HEALTH & SAFETY MANUAL," BOTH AVAILABLE AT HTTPS://WWW.NREL.GOV/ABOUT/EHS.HTML. THE SUBCONTRACTOR IS RESPONSIBLE FOR ENSURING ONGOING COMPLIANCE WITH ANY UPDATES AND/OR REVISIONS TO THE APPLICABLE NREL ENVIRONMENT, HEALTH & SAFETY MANUAL.**

THE SUBCONTRACTOR IS SUBJECT TO ALL APPLICABLE PROCEDURES FOR INVESTIGATING VIOLATIONS, ENFORCING COMPLIANCE WITH REQUIREMENTS, AND ASSESSING CIVIL PENALTIES OR FEE REDUCTIONS FOR VIOLATIONS UNDER DOE'S "WORKER SAFETY AND HEALTH" RULE. WHEN THESE "WORKER SAFETY AND HEALTH REQUIREMENTS" ARE MADE APPLICABLE TO THE WORK TO BE PERFORMED UNDER AN NREL SUBCONTRACT, THE SUBCONTRACTOR SHALL ALSO COMPLY WITH THE CLAUSE "INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION" (DEAR 970.5223-1).

(b) The Subcontractor shall have a structured approach to its worker safety and health program that at a minimum meets the mandatory requirements specified in Appendix A of 10 CFR 851 for implementing any of the following functional areas applicable to the work to be performed: (1) construction safety; (2) fire protection; (3) firearms safety; (4) explosives safety; (5) pressure safety; (6) electrical safety; (7) industrial hygiene; (8) occupational medicine; (9) biological safety; and (10) motor vehicle safety.

(c) The Subcontractor shall be responsible for full compliance (inclusive of its lower-tier Subcontractors) with all applicable worker safety and health standards of DOE and NREL to provide subcontract work that is free from recognized hazards that are causing or have the potential to cause death or serious physical harm to workers. The Subcontractor shall comply with all Safety and Health Standards applicable to the hazards of the work to be performed, including but not limited to: (a) 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses; (b) 29 CFR 1910 Occupational Safety and Health Standards and ACGIH Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; (c) 29 CFR 1926 Safety and Health Regulations for Construction; (d) ANSI Z88.2 Respiratory Protection; (e) ANSI Z136.1 Safe Use of Lasers; (f) ANSI Z49.1 Welding, Cutting, and Allied Processes; (g) NFPA 70 National Electrical Code; and (h) NFPA 70E Standard for Electrical Safety in the Workplace. Nothing in this Paragraph (c) shall be construed as relieving the Subcontractor from complying with any additional specific safety and health requirements necessary to protect the safety and health of workers.

(d) In conforming to the worker safety and health requirements identified the Subcontractor shall provide at least worker safety and health supervision in the following areas: (1) management responsibilities; (2) worker rights and responsibilities; (3) hazard identification and assessment; (4) hazard prevention and abatement; (5) training and information; and (6) recordkeeping and reporting.

(e) NREL may inspect the Subcontractor's operation as work proceeds, from time to time, for compliance with worker safety and health requirements contained in this subcontract. The NREL Subcontract Administrator shall direct the Subcontractor to make the necessary corrections commensurate with deficiencies found. The Subcontractor shall make these corrections at no additional expense to NREL. The Subcontractor shall participate in NREL's fact-finding investigations of accidents, injuries, occurrences, and near-misses. The Subcontractor shall participate in fact-finding investigations at no additional expense to NREL. The Subcontractor shall remove from the work site any employee that NREL identifies in writing as unsafe, incompetent, careless, or otherwise objectionable. The Subcontractor shall replace the removed employee at no additional expense to NREL. Any NREL representatives, NREL Subcontractors, or DOE representatives, including but not limited to the NREL Technical Monitor or Project Manager, the DOE Federal Project Director, the NREL Subcontract Administrator and NREL and DOE EHSS&Q representatives have authority to stop work if unsafe conditions exist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of or in connection with any unsafe conditions work stoppage. The Subcontractor's violation, refusal, or failure to abate violations, or applicable deficiencies may be justification for subcontract termination in accordance with the termination or default clauses of the subcontract terms and conditions.

(f) The Subcontractor shall complete and post the Form DOE-F-5480.4 at the work site. The Subcontractor shall make available Form DOE-F-5480.4, "[Sub]Contractor Employee Occupational Safety or Health Complaint" to its employees. The Subcontractor shall maintain specific records and submit the information covering experience of both its direct employees and that of its lower-tier Subcontractors. The Subcontractor shall immediately provide to the NREL Technical Monitor or Project Manager and the NREL Subcontract Administrator notification of any injury or property damage incident and provide sufficient information necessary for NREL to complete DOE-F-5484.3 "The Individual Accident/Incident Report." Such information shall be submitted, as appropriate, for any period of time prior to final payment and closeout of this subcontract.

DRUG-FREE WORKPLACE (MAY 2001)
*Derived from **FAR 52.223-6** (MAY 2001)*
(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or - leased property.)

(a) Definitions, as used in this clause,
- (1) "Controlled substance," means a controlled substance in subcontract schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
- (2) "Conviction," means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
- (3) "Criminal drug statute," means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
- (4) "Drug-free workplace," means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- (5) "Employee," means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.
- (6) "Individual," means a Subcontractor that has no more than one employee including the Subcontractor.

(b) The Subcontractor, if other than an individual, shall—within thirty (30) days after award (unless a longer period is agreed to in writing for subcontracts of thirty (30) days or more performance duration), or as soon as possible for subcontracts of less than thirty (30) days performance duration—
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about—
  - (ii) The dangers of drug abuse in the workplace;
  - (iii) The Subcontractor's policy of maintaining a drug-free workplace;
  - (iv) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (v) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Subcontract, the employee will—
  - (ii) Abide by the terms of the statement; and

(iii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the NREL Subcontract Administrator in writing within ten (10) days after receiving notice under subdivision (b) (4) (ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(ii) Taking appropriate personnel action against such employee, up to and including termination; or

(iii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) though (b)(6) of this clause.

(c) The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.

(d) In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment."

INSURANCE - WORK ON A GOVERNMENT INSTALLATION (SPECIAL-CONSTRUCTION) (MAR 2009)
*Derived from **FAR 52.228-5** (JAN 1997) (FD)*
(Applies to all construction subcontracts except design-build subcontracts.)

(a) The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the kinds and minimum amounts of insurance required in this clause.

(b) The Alliance for Sustainable Energy, LLC (Alliance) and the U.S. Department of Energy and their officers, employees, and agents shall be listed as additional insured in all policies of insurance issued to the Subcontractor, and its lower-tier Subcontractors, in furtherance of performance of work under this subcontract when such listing is appropriate to the type of policy issued.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As Required by Law	As Required by Law	N/A
Employer's Liability	$1,000,000.00	$1,000,000.00	N/A
General Liability	$1,000,000.00	$1,000,000.00	$1,000,000.00
Automobile Liability	$1,000,000.00	$1,000,000.00	$1,000,000.00
"All Risk" Builder's Risk	100% Structure and Material Value (Subcontractor is responsible for any deductible)	100% Structure and Material Value (Subcontractor is responsible for any deductible)	N/A

(c) Before commencing work under this subcontract, the Subcontractor shall provide the NREL Subcontract Administrator with written proof that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Alliance for Sustainable Energy, LLC and the Government's interest shall not be effective—

(1) For such period as the laws of the State in which this subcontract is to be performed prescribe; or

(2) Until thirty (30) days after the insurer or the Subcontractor gives written notice to the NREL Subcontract Administrator, whichever period is longer.

(d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in design-build teaming agreements and lower-tier subcontracts under this subcontract and shall require design-build team members and lower-tier Subcontractors to provide and maintain the same kinds and minimum amounts of insurance required under this subcontract (exceptions to this requirement will require prior approval from the NREL Subcontract Administrator) in the design-build teaming agreement and lower-tier subcontracts. The Subcontractor shall maintain a copy of all the design-build team member and lower-tier Subcontractor's proofs of required

insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS AND SET OFF FOR HAZARDOUS MATERIALS RESPONSE, CLEANUP, AND DISPOSAL (NOV 2008)

*Derived from **FAR 52.236-9** (APR 1984)*

(Applies to all subcontracts and purchase orders where the Subcontractor or lower-tier Subcontractors, and their employees, officers, agents, or other persons representing the Subcontractor, will enter onto NREL-operated facilities or government-owned or -leased properties.)

(a) The Subcontractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this subcontract. The Subcontractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during subcontract performance, or by the careless operation of equipment, or by workmen, the Subcontractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the NREL Subcontract Administrator.

(b) The Subcontractor shall protect from damage all existing improvements and utilities—

(1) At or near the work site, and

(2) On adjacent property of a third party, the locations of which are made known to or should be known by the Subcontractor.

(c) The Subcontractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this subcontract or failure to exercise reasonable care in performing the work. If the Subcontractor fails or refuses to repair the damage promptly, the NREL Subcontract Administrator may have the necessary work performed and charge the cost to the Subcontractor.

(d) The Subcontractor shall be responsible for reasonable costs associated with NREL-directed emergency response, cleanup, and disposal of hazardous material, chemical, or petroleum spills caused by the Subcontractor or any of its lower-tier Subcontractors during performance of work required under this subcontract. Upon determination of reasonable costs to be back charged to the Subcontractor resulting from such hazardous material spills, the NREL Subcontract Administrator shall provide the Subcontractor with written notice of the work performed and the costs to be charged to the Subcontractor. The back charge shall be set off against the subcontract price and the subcontract shall be modified in writing. NREL has the right to set off such costs against any amount payable to the Subcontractor whether or not in connection with this subcontract.

(e) The rights and remedies of NREL/Government in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
*Derived from **FAR 52.236-14** (APR 1984)*
Applies to construction subcontracts to be performed on a Government-owned or -leased facility.

(a) NREL shall make all reasonably required amounts of utilities available to the Subcontractor from existing outlets and supplies, as specified in the subcontract. Unless otherwise provided in the subcontract, the utility service consumed shall be at no charge. If the subcontract does provide an amount for each utility service consumed, then that amount of each utility service consumed shall be charged to or paid for by the Subcontractor at prevailing rates charged to NREL or, where the utility is produced by the Government, at reasonable rates determined by the DOE Contracting Officer. The Subcontractor shall carefully conserve any utilities furnished without charge.

(b) The Subcontractor, at its expense and in a workmanlike manner satisfactory to the NREL Subcontract Administrator, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by NREL, the Subcontractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)
*Derived from **DEAR 952.203-70** (FD)*
(Applies to subcontracts for work directly related to activities at NREL-operated facilities or Government-owned or -leased properties.)

(a) The Subcontractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of NREL directly related to activities at DOE-owned or -leased sites.

(b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts at all tiers, for subcontracts involving work performed on behalf of NREL directly related to activities at DOE-owned or -leased sites.

ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014)
*Derived from **DEAR 970.5204-3** (OCT 2014) (FD)*
(Applies to cost type subcontracts exceeding $2M and cost type subcontracts involving complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.)
(Applies to cost type subcontracts where the DOE Contracting Officer or the NREL Subcontract Administrator has specifically notified the Subcontractor that the subcontract is or involves a critical task related to the Prime Contract.)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Subcontractor in its performance of this subcontract, including records series described within the subcontract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, – Subchapter B, "Records Management." The Subcontractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224-2 "Privacy Act."

(b) Subcontractor-owned records. The following records are considered the property of the Subcontractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the subcontract as being operated and maintained by the Subcontractor in Privacy Act systems of records.

(2) Confidential Subcontractor financial information, internal corporate governance records and correspondence between the Subcontractor and other segments of the Subcontractor located away from the DOE facility (i.e., the Subcontractor's corporate headquarters);

(3) Records relating to any procurement action by the Subcontractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this subcontract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The Subcontractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related Subcontractor invention disclosures, documents and correspondence, where the Subcontractor has elected rights or has permission to assert rights and

has not relinquished such rights or turned such rights over to NREL/the Government.

(c) Subcontract completion or termination. Upon subcontract completion or termination, the Subcontractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor Subcontractor, its designee, or other destinations, as directed by the NREL Subcontract Administrator. Upon the request of NREL/the Government, the Subcontractor shall provide either the original Subcontractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor subcontractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the Subcontractor chooses to provide its original Subcontractor-owned records to NREL/the Government or its designee, the Subcontractor shall retain future rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Subcontractor under this subcontract in the possession of the Subcontractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by NREL/the Government or its designees at all reasonable times, and the Subcontractor shall afford NREL/the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the DOE Contracting Officer or NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the DOE Contracting Officer or the NREL Subcontract Administrator for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(c) Applicability. This clause applies to all records created, received and maintained by the Subcontractor without regard to the date or origination of such records including all records acquired from a predecessor Subcontractor.

(d) Records maintenance and retention. The Subcontractor shall create, maintain, safeguard, and dispose of records in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, - Subchapter B, “Records Management” and the National Archives and Records Administration (NARA) – approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the Subcontractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if upon termination or completion of the subcontract, NREL/the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(e) Lower-Tier Subcontracts.

(1) The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72, or whenever an on-site lower-tier subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Subcontractor shall include the requirements of this clause in all on-site lower-tier subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR

835.2); (B) areas where beryllium concentrations exceed or can reasonably expected to exceed action levels specified in 10 CRF 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Subcontractor may elect to take on the obligations of the provisions of this clause in lieu of the lower-tier subcontractor, and maintain records that would otherwise be maintained by the lower-tier subcontractor.

INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (NOV 2016)

*Derived from **DEAR 970.5223-1** (FD) (DEC 2000)*

(Applies to all subcontracts where the Subcontractor or lower-tier Subcontractors and their employees, officers, agents, or other persons representing the Subcontractor will perform complex or hazardous work on NREL-operated facilities or Government-owned or –leased properties.)

(a) For the purposes of this clause:
  (1) "Safety' encompasses environment, safety, and health, including pollution prevention and waste minimization; and
  (2) 'Employees" include lower-tier Subcontractor employees.

(b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
  (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier Subcontractor employees managing or supervising employees performing work.
  (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  (6) Upon discovery of potential cultural resources, the Subcontractor shall stop work immediately and report to the NREL Project Manager. The Subcontractor shall not handle, move, or otherwise disturb items that are potential cultural resources, either on the ground surface or buried/unearthed below the ground surface. Items discovered remain the property of DOE and may not be removed from the site. The Subcontractor shall not alter, damage, or deconstruct existing structures on the National Register of Historic Places as identified by the NREL Project Manager.
  (7) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  (8) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are

requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

(c) The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
(1) Define the scope of work;
(2) Identify and analyze hazards associated with the work;
(3) Develop and implement hazard controls;
(4) Perform work within controls; and
(5) Provide feedback on adequacy of controls and continue to improve safety management.

(d) The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to NREL/DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.

(e) The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for NREL's approval, its safety performance objectives, performance measures, and commitments consistent with and in response to NREL/DOE program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The Subcontractor shall comply with, and assist NREL/DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of NREL's Prime Contract entitled "Laws, Regulations, and DOE Directives." The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.

(g) The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by the NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower–tier Subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(h) Regardless of the performer of the work, the Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract. The Subcontractor is responsible for flowing down the ES&H requirements applicable to this subcontract to subcontracts at any tier to the extent necessary to ensure the Subcontractor's compliance with the requirements.

(i) The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at an NREL operated facility or Government-owned or-leased properties. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may choose not to require the lower-tier Subcontractor to submit a Safety Management System for the Subcontractor's review and approval.

SUSTAINABLE ACQUISITION PROGRAM (NOV 2019)
*Derived from **DEAR 970.5223-7** (OCT 2010) (FD)*
(Applies to subcontracts or purchase orders for supplies or services that support operation of NREL, exceed the Simplified Acquisition Threshold, and offer opportunities for the acquisition of energy efficient or environmentally sustainable supplies or services).

(a) In the spirit of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, NREL is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the nature environment and protect the health and well being of its employees and Subcontractors. In the performance of providing products or services under this subcontract or purchase order, the Subcontractor shall provide products or services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well being of NREL employees, Subcontractor and visitors.

(b) Green purchasing or sustainable acquisition has several interacting initiatives. The Subcontractor must comply with initiatives that are current as of the subcontract or purchase order award date. NREL may require compliance with revised initiatives from time to time. The initiatives important to Executive Orders associated with sustainable acquisition practices are explained on the following Government or Industry Internet Sites:

(1) Recycled Content Products are described at http://epa.gov/cpg
(2) Biobased Products are described at http://www.biopreferred.gov/
(3) Energy efficient products are at http://energystar.gov/products for Energy Star products
(4) Energy efficient products are at http://www.femp.energy.gov/procurement for FEMP designated products
(5) 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
(6) 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/executive-orders/disposition.html
(7) Non-Ozone Depleting Alternative Products are at http://www.epa.gov/ozone/strathome.html
(8) Water efficient plumbing products are at http://epa.gov/watersense

The Subcontractor may request an equitable adjustment to the terms of its subcontract or purchase order using the procedures in the applicable Changes clause in the relevant Appendix B.

(c) The clauses at FAR 52.223-2, Affirmative Procurement of Bio based 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 bio based 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—

(1) Is not available;
(2) 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 DOE and found to be acceptable at the silver and gold level;
(3) Does not meet performance needs; or,
(4) Cannot be delivered in time to meet a critical need.

(d) In the performance of this subcontract, 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, bio based 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://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf.

(e) Reserved.

(f) In complying with the requirements of paragraph (c) of this clause, the Subcontractor, working through the NREL Subcontract Administrator, shall coordinate its activities with and submit required reports to the NREL Sustainability Administrator.

(g) The Subcontractor shall prepare and submit performance reports, if required, using prescribed NREL formats made available to the Subcontractor from the NREL Sustainability Administrator, on September 30 of the year of performance, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the subcontract or purchase order. Failure to perform this requirement may be considered a failure that endangers performance of this subcontract and may result in termination for default.

(h) The Subcontractor will comply with the procedures in paragraphs (c) through (f) regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f), and submit the reports directly to the NREL Sustainability Administrator.

The Subcontractor will advise the NREL Subcontract Administrator if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) apply.

The reports may be submitted at the conclusion of this subcontract or purchase order term provided that the delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each fiscal year ending on September 30th 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.

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS (NOV 2019)

Derived from FAR 52.223-2 (SEP 2013)

(Applies to subcontracts for service and construction that involve the use of USDA-designated items at http://www.biopreferred.gov or 7 CFR part 3201.)

(a) In the performance of this subcontract, the subcontractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless-

(1) The product cannot be acquired-

(i) Competitively within a time frame providing for compliance with the subcontract performance schedule;

(ii) Meeting subcontract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at http://www.biopreferred.gov.

(c) In the performance of this subcontract, the Subcontractor shall-

(1) Report to the NREL Subcontract Administrator, on the product types and dollar value of any USDA-designated biobased products purchased by the Subcontractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report no later than-

(i) October 31 of each year during subcontract performance; and

(ii) At the end of subcontract performance.

52.223-10 WASTE REDUCTION PROGRAM (NOV 2019)

Derived from FAR 52.223-10 (MAY 2011)

(Applies to all solicitations and subcontracts for support services at NREL-operated facilities.)

(a) Definitions. As used in this clause-

(1) "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

(2) "Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

(3) "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 3(e) of Executive Order 13423, the subcontractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this subcontract. The Subcontractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C.6962, *etseq*.) and implementing regulations (40 CFR Part 247).

OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (NOV 2019)
Derived from FAR 52.223-11 (JUN 2016)
(Applies to all subcontracts or purchase orders performed or delivered within the United States.)

(a) Definitions. As used in this clause–

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.

"Ozone-depleting substance," means any substance the Environmental Protection Agency designates in 40 CFR part 82 as-

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Subcontractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C.7671j(b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

*The Subcontractor shall insert the name of the substance(s).

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Subcontractor shall–

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to NREL and the Government under this subcontract by–
    (i) Type of hydrofluorocarbon (e.g., HFC-134 a, HFC-125, R-410 A, R-404 A, etc.);
    (ii) Subcontract number; and
    (iii) Equipment/appliance;
(2) Report that information to the NREL Subcontract Administrator –
    (i) Annually by November 30 of each year during subcontract performance; and

(ii) At the end of subcontract performance.

(d) The Subcontractor shall refer to EPA's SNAP program (available at http://www.epa.gov/snap) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at http://www.epa.gov/snap.

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007) (SPECIAL OCT 2008)

*Derived from **FAR 52.223-15** (DEC 2007) (FD)*

Applies to all subcontracts where energy consuming products will be delivered, acquired, or furnished for use by the Subcontractor or for use on NREL-operated facilities or government-owned or -leased properties.

(a) Definition. As used in this clause—
- (1) "Energy-efficient product"—
  - (i) Means a product that—
    meets DOE and Environmental Protection Agency criteria for use of the Energy Star® trademark label; or
  - (ii) Is in the upper twenty-five percent (25%) of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program (FEMP).
- (2) [Reserved.]

(b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of subcontract award, for products that are—
- (1) Delivered;
- (2) Acquired by the Subcontractor for use in performing services at a DOE-owned or -leased facility;
- (3) Furnished by the Subcontractor for use by NREL/Government; or
- (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Subcontractor (including any lower-tier Subcontractor) unless—
- (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
- (2) Otherwise approved in writing by the NREL Subcontract Administrator.

(d) Information about these products is available for—
- (1) ENERGY STAR® at http://www.energystar.gov/products; and
- (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (NOV 2019)

Derived from FAR 52.223-12 (JUN 2016)

(Applies to all indefinite delivery service subcontracts)

(a) Definitions. As used in this clause–

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR Part 82 subpart G with supplemental tables of alternatives available at (http://www.epa.gov/snap/).

"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.

(b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7 671h) as each or both apply to this subcontract.

(c) Unless otherwise specified in the subcontract, the Subcontractor shall reduce the use, release, or emissions of high global warming potential hydrofluorocarbons under this subcontract by–

(1) Transitioning over time to the use of another acceptable alternative in lieu of high global warming potential hydrofluorocarbons in a particular end use for which EPA's SNAP program has identified other acceptable alternatives that have lower global warming potential;

(2) Preventing and repairing refrigerant leaks through service and maintenance during contract performance;

(3) Implementing recovery, recycling, and responsible disposal programs that avoid release or emissions during equipment service and as the equipment reaches the end of its useful life; and

(4) Using reclaimed hydrofluorocarbons, where feasible.

(d) (d) For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, that will be maintained, serviced, repaired, or disposed under this contract, the Subcontractor shall–

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons added or taken out of equipment or appliances under this subcontract by–

(i) Type of hydrofluorocarbon (e.g., HFC-134 a, HFC-125, R-410 A, R-404 A, etc.);

(ii) Subcontract number;

(iii) Equipment/appliance; and

(2) Report that information to the NREL Subcontract Administrator –

(i) No later than November 30 of each year during subcontract performance; and

(ii) At the end of subcontract performance.

(e) The subcontractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at http://www.epa.gov/snap/.

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (NOV 2019)

Derived from FAR 52.223-17 (AUG 2018)

(Applies to all service and construction subcontracts unless the subcontract will not involve the use of a product that is or can be made with recovered material.)

(a) In the performance of this subcontract, the subcontractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

(1) Competitively within a timeframe providing for compliance with the subcontract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, http://https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program. The list of EPA-designated items is available at http://https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.