

# **APPENDIX B-10**

## **STANDARD TERMS AND CONDITIONS FOR**

### **FIRM FIXED-PRICE SUBCONTRACTS**

#### **FOR DESIGN/BUILD**

**August 1, 2012**

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. All references to "NREL" in this subcontract shall mean the Alliance for Sustainable Energy, LLC.

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**SECTION I. CLAUSES APPLICABLE TO NREL SUBCONTRACTS**

The following clauses are applicable to subcontracts that require the Subcontractor or its lower-tier subcontractors, or other persons representing the Subcontractor, to perform work for NREL.

**SECTION I.A CLAUSES INCORPORATED BY REFERENCE FOR AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

This Appendix incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

The following additional clauses apply to subcontracts or purchase orders funded in whole or in part under the American Recovery and Reinvestment Act of 2009:

FAR 52.203-15	Whistleblower Protection Under the American Recovery and Reinvestment Act of 2009 (JUN 2010)
FAR 52.204-11	American Recovery and Reinvestment Act-Reporting Requirements (JUL 2010)
FAR 52.212-5	Subcontractor Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (APR 2012) and Alternate II (DEC 2010)
FAR 52.215-2	Audit and Records – Negotiation (OCT 2010) and Alternate I (MAR 2009)
FAR 52.225-21	Required Use of American Iron, Steel, and Manufactured Goods– Buy American Act-Construction Materials (OCT 2010)
FAR 52.225-22	Notice of Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act-Construction Materials (OCT 2010)
FAR 52.225-23	Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act- Construction Materials Under Trade Agreements (MAR 2012)
FAR 52.225-24	Notice of Required Use of American Iron, Steel, and Manufactured Goods – Buy American Act- Construction Materials Under Trade Agreements (OCT 2010)
FAR 52. 244-6	Subcontracts for Commercial Items (OCT 2010)

**CLAUSE 1. DEFINITIONS (SPECIAL) (APR 2012)**

*Derived from FAR 52.202-1 (JAN 2012) as modified by DEAR 902.201*

*(Applies to all subcontracts.)*

- (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.

**CLAUSE 2. 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.

**CLAUSE 3. 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.

**CLAUSE 4. 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.

**CLAUSE 5. 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.

**CLAUSE 6. RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (OCT 2011)**

*Derived from FAR 52.203-6 (SEP 2006) (FD)*

*(Applies to all subcontracts exceeding \$150,000.)*

- (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.

**CLAUSE 7. ANTI-KICKBACK PROCEDURES (OCT 2011)**

*Derived from FAR 52.203-7 (OCT 2010) (FD)*

*(Applies to all subcontracts exceeding \$150,000.)*

- (a) Definitions.
- (1) "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, directly or indirectly, 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.
  - (2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
  - (3) "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.
  - (4) "Subcontractor," as used in this clause, means a person who has entered into a subcontract with the NREL.
  - (5) "Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.
  - (6) "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.
  - (7) "Lower-tier Subcontractor," as used in this clause, means—
    - (i) 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
    - (ii) Any person who offers to furnish or furnishes general supplies to the Subcontractor or a Prime Contractor.
  - (8) "Lower-tier Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a lower-tier Subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), 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 Department of Justice.

- (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 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 paragraph (c)(1), in all lower-tier subcontracts under this subcontract which exceed \$150,000.

**CLAUSE 8. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2011)**

*Derived from FAR 52.203-12 (OCT 2010) (FD)*

*(Applies to all subcontracts exceeding \$150,000.)*

- (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:
- (1) 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.
  - (2) Professional and technical services.
    - (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional

- or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
  - (iii) As used in paragraph (c) (2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a) (2) (iii)).
  - (iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.
- (d) Disclosure.
- (1) If the Subcontractor 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.
  - (3) The Subcontractor shall include the substance of this clause, including this paragraph (g), in any lower-tier subcontract exceeding \$150,000.

**CLAUSE 9. PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL)  
(MAY 2011)**

*Derived from FAR 52.204-4*

*(Applies to all subcontracts exceeding \$150,000.)*

- (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.

**CLAUSE 10. PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN  
SUBCONTRACTING AT ANY TIER WITH CONTRACTORS AND SUBCONTRACTORS  
DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)**

*Derived from FAR 52.209-6 (FD)*

*(Applies to all subcontracts with lower-tier subcontracts exceeding \$30,000)*

- (a) Definition.
- (1) "Commercially available off-the-shelf (COTS)" item, as used in this clause—
    - (i) Means any item of supply (including construction material) that is—

- (A) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
  - (B) Sold in substantial quantities in the commercial marketplace; and
  - (C) Offered to 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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.
- (b) The Government suspends or debarbs 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 \$30,000 with a lower-tier Subcontractor that is debarred, suspended, or proposed for debarment 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 \$30,000, 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 Excluded Parties List System). 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 in the Excluded Parties List System.
    - (3) The compelling reason(s) for doing business with the lower-tier Subcontractor notwithstanding its inclusion in the Excluded Parties List System.
    - (4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting NREL/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 \$30,000 in value; and
    - (2) Is not a lower-tier subcontract for commercially available off-the-shelf items.

**CLAUSE 11. AUDIT AND RECORDS NEGOTIATION (OCT 2011) AND ALTERNATE I (MAR 2009) AND ALTERNATE II (APR 1998)**

*Derived from FAR 52.215-2 (OCT 2010) (FD)*

*(Applies to all subcontracts exceeding \$150,000.)*

*(Alternate I applies to all subcontracts and purchase orders where work performed is funded in whole or in part under the American Recovery and Reinvestment Act of 2009.)*

*(Alternate II applies to cost type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations.)*

- (a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, the cognizant Federal Agency Official, or the NREL Subcontract Administrator, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor’s plants, or parts of them, engaged in performing the subcontract.
- (c) Cost or pricing data. If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, the cognizant Federal Agency Official, or the NREL Subcontract Administrator, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor’s records, including computations and projections, related to—
  - (1) The proposal for the subcontract, lower-tier subcontract, or modification;
  - (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the subcontract, lower-tier subcontract, or modification; or
  - (4) Performance of the subcontract, lower-tier subcontract, or modification.
- (d) 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 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.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer, the cognizant Federal Agency Official or the NREL Subcontract Administrator shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—
  - (1) The effectiveness of the Subcontractor’s policies and procedures to produce data compatible with the objectives of these reports; and
  - (2) The data reported.
- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three (3) years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition—

- (1) If this subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
  - (2) The Subcontractor shall make available records relating to appeals under the Subcontract Issues and Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract until such appeals, litigation, or claims are finally resolved.
- (g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and—
- (1) That are cost reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  - (2) For which cost or pricing data are required; or
  - (3) That requires the lower-tier subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government Prime Contract.

**ALTERNATE I (MAR 2009).**

***For all subcontracts and purchase orders where work performed is funded in whole or in part, under the American Recovery and Reinvestment Act of 2009, substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:***

- (d) Comptroller General or Inspector General. (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—
- (1) Examine any of the Subcontractor's or any lower-tier subcontractor's records that pertain to and involve transactions relating to this subcontract or any subcontract hereunder; and
  - (2) Interview any officer or employee regarding such transactions.
- (g) (1) Except as provided in paragraph (g)(2) of this clause, the Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract. The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government Prime Contract.
- (2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

**ALTERNATE II (APR 1998).**

***For cost type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations, the following paragraph (h) shall be added.***

- (h) The provisions of OMB Circular No.A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this subcontract.

**CLAUSE 12. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL) (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.

**CLAUSE 13. UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)**

*Derived from FAR 52.219-8 (FD)*

*(Applies to all subcontracts exceeding \$150,000.)*

- (a) 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, at any tier, 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.
- (b) 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.
- (c) Definitions. As used in this subcontract—

- (1) “HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- (2) “Service-disabled veteran-owned small business concern”—
  - (i) Means a small business concern—
    - (A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
    - (B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
  - (ii) “Service-disabled veteran” means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
- (3) “Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- (4) “Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—
  - (i)
    - (A) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
    - (B) No material change in disadvantaged ownership and control has occurred since its certification;
    - (C) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
    - (D) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
  - (ii) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.
- (5) “Veteran-owned small business concern” means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more veterans.
- (6) “Women-owned small business concern” means a small business concern—
  - (i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (ii) Whose management and daily business operations are controlled by one or more women.

- (d) (1) Subcontractors acting in good faith may rely on written representations by their lower-tier Subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) The Subcontractor shall confirm that a lower-tier Subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—
  - (i) HUBZone small business database search application web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;
  - (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
  - (iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

**CLAUSE 14. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

*Derived from FAR 52.222-1*

*(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.

**CLAUSE 15. CONVICT LABOR (JUN 2003)**

*Derived from FAR 52.222-3*

*(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.

**CLAUSE 16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (OCT 2011)**

*Derived from FAR 52.222-4 (JUL 2005) (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 forty (40) hours in any workweek unless they are paid at least one and a half (1½) times the basic rate of pay for each hour worked over forty (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/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 forty (40) hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.
- (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 Act.
- (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 three (3) years after subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (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 that 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.

**CLAUSE 17. DAVIS-BACON ACT (JUL 2005)**

*Derived from FAR 52.222-6 (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

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 Davis-Bacon Act 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 Davis-Bacon poster (WH-1321) shall be posted at all times by the Subcontractor and its lower-tier Subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.
- (c) (1) The 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.
  - (iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

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  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the NREL Subcontract Administrator or will notify the NREL Subcontract Administrator within the thirty (30) day period that additional time is necessary.

- (2) 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 thirty (30) days of receipt and so advise the NREL Subcontract Administrator or will notify the NREL Subcontract Administrator within the thirty (30) day period that additional time is necessary.
- (3) 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.
- (e) If the Subcontractor does not make payments to a trustee or other third person, the Subcontractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subcontractor, that the applicable standards of the Davis-Bacon Act 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.

**CLAUSE 18. WITHHOLDING OF FUNDS (FEB 1988)**

*Derived from FAR 52.222-7*

*(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 Davis-Bacon 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 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.

**CLAUSE 19. PAYROLLS AND BASIC RECORDS (JUN 2010)**

*Derived from FAR 52.222-8*

*(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 three (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 equivalent thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), 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 Davis-Bacon Act, 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 section 1(b)(2)(B) of the Davis-Bacon Act, the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) The Subcontractor shall submit weekly for each week in which any subcontract work is performed a copy of all payrolls to the 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). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Subcontractor is responsible for the submission of copies of payrolls by all lower-tier Subcontractors. Subcontractor 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 Prime Contractor to require a Subcontractor to provide addresses and social security numbers to the Prime Subcontractor for its own records, without weekly submission to the NREL Subcontract Administrator.

- (2) 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.
  - (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.
  - (4) The falsification of any of the certifications in this clause may subject the Subcontractor or lower-tier Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Subcontractor or lower-tier Subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the 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.

**CLAUSE 20. APPRENTICES AND TRAINEES (JUL 2005)**

*Derived from FAR 52.222-9*

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

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

- (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
    - (ii) In the first 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.
  - (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to the entire work force under the registered program.
  - (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
  - (4) Where a Subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subcontractor's or lower-tier Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
  - (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
  - (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the 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.

**CLAUSE 21. COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

*Derived from FAR 52.222-10*

*(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.

**CLAUSE 22. LOWER-TIER SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)**

*Derived from FAR 52.222-11 (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, Davis-Bacon Act of this subcontract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and

- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, 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) Davis-Bacon Act;
  - (2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this subcontract);
  - (3) Apprentices and Trainees;
  - (4) Payrolls and Basic Records;
  - (5) Compliance with Copeland Act Requirements;
  - (6) Withholding of Funds;
  - (7) Subcontracts (Labor Standards);
  - (8) Contract Termination—Debarment;
  - (9) Disputes Concerning Labor Standards;
  - (10) Compliance with Davis-Bacon and Related Act 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 fourteen (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 fourteen (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.

**CLAUSE 23. SUBCONTRACT TERMINATION--DEBARMENT (FEB 1988)**

*Derived from FAR 52.222-12*

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

A breach of the subcontract clauses entitled 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 Davis-Bacon 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.

**CLAUSE 24. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

*Derived from FAR 52.222-13*

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

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this subcontract.

**CLAUSE 25 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

*Derived from FAR 52.222-14*

*(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.

**CLAUSE 26. CERTIFICATION OF ELIGIBILITY (FEB 1988)**

*Derived from FAR 52.222-15*

*(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 section 3(a) 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 section 3(a) 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.

**CLAUSE 27. WALSH-HEALEY PUBLIC CONTRACTS ACT (OCT 2011)**

*Derived from FAR 52.222-20 (OCT 2010) (FD)*

*(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 the Walsh-Healey Public Contracts Act, as amended ([41 U.S.C. 35-45](#)), the following terms and conditions apply:

- (a) All stipulations required by the Act 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 handicapped workers 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. 40](#)).

**CLAUSE 28. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

*Derived from FAR 52.222-21 (FD)*

*(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.)*

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this 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.

**CLAUSE 29. EQUAL OPPORTUNITY (MAR 2007)**

*Derived from FAR 52.222-26 (FD)*

*(Applies to all subcontracts unless exempt from Executive Order 11246.) (See FAR 22.807(a).)*

- (a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b)
  - (1) If, during any 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, 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, 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, or national origin.
  - (5) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the 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.
  - (6) The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
  - (7) The Subcontractor shall furnish to 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.
  - (8) The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit the NREL/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.
  - (9) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this subcontract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further 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.
  - (10) 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.
- (11) 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 60-1.1.

**CLAUSE 30. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)**

*Derived from FAR 52.222-27*

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

- (a) Definitions.
- (1) "Covered area," as used in this clause, means the geographical area described in the solicitation for this subcontract.
- (2) "Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.
- (3) "Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) "Minority," as used in this clause, means—
- (i) 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).
- (ii) 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);
- (iii) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
- (iv) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Subcontractor, or a Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such 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 there under.
  - (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Subcontractor during the training period, and the Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
  - (g) The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
    - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Subcontractor's employees are assigned to work. The Subcontractor, if possible, will assign two (2) 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 Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor'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 contract obligations;
  - (ii) Including the policy in any policy manual and in collective bargaining agreements;
  - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
  - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
  - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and Subcontractors with which the Subcontractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Subcontractor's recruitment area and employment needs. Not later than one (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 contract 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 lower-tier 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, 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 the NREL/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).

**CLAUSE 31. EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)**

*Derived from FAR 52.222-35 (FD)*

*(Applies to all subcontracts exceeding \$100,000.)*

- (a) Definitions. As used in this clause—
  - (1) "All employment openings" means all positions except executive and senior management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days duration, and part-time employment.
  - (2) "Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).
  - (3) "Disabled veteran" means—
    - (i) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
    - (ii) A person who was discharged or released from active duty because of a service-connected disability.
  - (4) "Executive and senior management" means any employee—
    - (i) Any employee—
      - (A) Compensated on a salary basis a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

- (B) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
  - (C) Who customarily and regularly directs the work of two (2) or more other employees; and
  - (D) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
  - (ii) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
- (5) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
- (6) "Positions that will be filled from within the Subcontractor's organization" means employment openings for which the Subcontractor will give no consideration to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.
- (7) "Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.
- (8) "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.
- (b) General.
- (1) The Subcontractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Subcontractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their disability status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:
- (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (iii) Rate of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;

- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
  - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under [38 U.S.C. 3687](#), professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Subcontractor including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (2) The Subcontractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended ([38 U.S.C. 4211](#) and 4212).
  - (3) The Department of Labor's regulations require Subcontractors with 50 or more employees and subcontract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.
- (c) Listing openings.
- (1) The Subcontractor shall immediately list all employment openings that exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract, including those not generated by this subcontract, and including those occurring at an establishment of the Subcontractor other than the one where the subcontract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.
  - (2) The Subcontractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
  - (3) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts/subcontracts. The Subcontractor may advise the State agency when it is no longer bound by this subcontract clause.
- (d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (e) Postings.
- (1) The Subcontractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

- (2) The employment notices shall—
  - (i) State the rights of applicants and employees as well as the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans and other protected veterans; and
  - (ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by the DOE Contracting Officer through the NREL Subcontract Administrator.
- (3) The Subcontractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Subcontractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, protected veterans, and Armed Forces service medal veterans.
- (f) Noncompliance. If the Subcontractor does not comply with the requirements of this clause, NREL/Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a Subcontractor by the Department of Labor for violations of this clause (52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include—
  - (1) Withholding progress payments;
  - (2) Termination or suspension of the subcontract; or
  - (3) Debarment of the Subcontractor
- (g) Lower-tier subcontracts. The Subcontractor shall insert the terms of this clause in all lower-tier subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

**CLAUSE 32. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2011)**

*Derived from FAR 52.222-36 (OCT 2010) (FD)*

*(Applies to all subcontracts exceeding \$15,000.)*

- (a) General.
  - (1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
    - (i) Recruitment, advertising, and job application procedures;
    - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

- (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.
- (b) Postings.
- (1) The Subcontractor agrees to post employment notices stating—
- (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
  - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary).
- (3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance.  
If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Lower-tier Subcontracts.  
The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**CLAUSE 33. EMPLOYMENT REPORTS ON VETERANS (SEP 2010)**

*Derived from FAR 52.222-37 (FD)*

*(Applies to all subcontracts exceeding \$100,000.)*

- (a) Definitions. As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “other protected veteran,” and “recently separated veteran,” have the meanings given in the Equal Opportunity for Veterans clause.
- (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 disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.
  - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and
  - (3) The maximum number and the minimum number of employees of the Subcontractor or lower-tier Subcontractor at each hiring location during the period covered by the report.
- (c) The Subcontractor shall report the above items by completing the Form VETS-100A, entitled “Federal Contractor Veterans’ Employment Report (VETS-100A Report).”
- (d) The Subcontractor shall submit VETS-100A Reports no later than September 30 of each year.
- (e) The employment activity report required by paragraph (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent twelve (12) month period preceding as of the ending date selected for the Subcontractors may select an ending date—
  - (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
  - (2) As of December 31, if the 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-100A. The Subcontractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR60-300.42), 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 \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**CLAUSE 34. EMPLOYMENT ELIGIBILITY VERIFICATION (SPECIAL) (JUL 2011)**

*Derived from FAR 52.222-54 (JAN 2009) (FD)*

*(Applies to all subcontracts.)*

- (a) Definitions. Used in this clause—
  - (1) “Commercially available off-the-shelf (COTS) item”—
    - (i) Means any item of supply that is—

- (A) A commercial item (as defined in paragraph (1) of the definition at 2.101);
- (B) Sold in substantial quantities in the commercial marketplace; and
- (C) Offered to NREL/Government, without modification, in the same form in which it is sold in the commercial marketplace; and
- (ii) Does not include bulk cargo, as defined in Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), 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.
- (2) “Employee assigned to the subcontract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a subcontract that is required to include the clause prescribed in FAR 22.1803. An employee is not considered to be directly performing work under a subcontract if the employee—
  - (i) Normally performs support work, such as indirect or overhead functions; and
  - (ii) Does not perform any substantial duties applicable to the subcontract.
- (3) “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.
- (4) “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.
- (5) “United States”, as defined as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, 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).
- (3) If the Subcontractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency 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.
- (4) Option to verify employment eligibility of all employees. The Subcontractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the subcontract. The Subcontractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—
- (i) Enrollment in the E-Verify program; or
  - (ii) Notification to E-Verify Operations of the Subcontractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).
- (5) 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 subcontract at any tier that is for—
  - (1) (i) commercial (except as specified herein) or noncommercial services or
  - (ii) construction;
  - (2) that has a value of more than \$3,000; and
  - (3) includes work performed in the United States.

The Subcontractor shall not include the requirements of this clause in subcontracts 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) that are performed by the COTS provider and are normally provided for that COTS item.

**CLAUSE 35. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

*Derived from FAR 52.223-3*

*(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.
  - (1) 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.

**CLAUSE 36. DUTY-FREE ENTRY (OCT 2011)**

*Derived from FAR 52.225-8 (FEB 2000) (FD)*

*(Applies to subcontracts exceeding \$150,000 where supplies are imported into the United States and duty-free entry may be obtained or subcontract value is less than \$150,000 and savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty.)*

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

**CLAUSE 37. BUY AMERICAN ACT—CONSTRUCTION MATERIALS (SEP 2010)**

*Derived from 52.225-9 (FEB 2009)*

*(Applies to construction subcontracts less than \$7,777,000)*

- (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/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 section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), 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/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 Buy American Act ([41 U.S.C. 10a - 10d](#)) by providing a preference for domestic construction material. In accordance with [41 U.S.C. 431](#), the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR [12.505\(a\)\(2\)](#)). The Subcontractor shall use only domestic construction material in performing this subcontract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to information technology that is a commercial item or to the construction material or components listed by the 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 Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
- (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act.
- (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 determines after subcontract award that an exception to the Buy American Act 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/Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison*			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign Construction Material			
Domestic Construction Material			
Item 2:			
Foreign Construction Material			
Domestic Construction Material			

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

[Include other applicable supporting information.]

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

**CLAUSE 38. BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2012)**

*Derived from 52.225-11*

*(Applies to construction subcontracts valued at \$7,777,000 or more.)*

(a) Definitions. As used in this clause—  
 “Caribbean Basin country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to NREL/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 section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), 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/Government are supplies, not construction material.

“Cost of components” means—

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

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
  - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

- (ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

- (1) This clause implements the Buy American Act ([41 U.S.C. 83](#)) by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR [12.505\(a\)\(2\)](#)). In addition, NREL/Government has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated county construction materials.
- (2) The Subcontractor shall use only domestic or designated country construction material in performing this subcontract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the NREL Subcontract Administrator in the subcontract schedule.
- (4) The NREL Subcontract Administrator may add other foreign construction material to the list in paragraph (b)(3) 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 restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

- (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
    - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
  - (c) Request for determination of inapplicability of the Buy American Act.
    - (1) (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(4) 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 contract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before subcontract award. If the Subcontractor does not submit a satisfactory explanation, the NREL/Government need not make a determination.
  - (2) If NREL/Government determines after contract award that an exception to the Buy American Act applies and the NREL Subcontract Administrator and the Subcontractor negotiate adequate consideration, the NREL Subcontract Administrator will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
  - (3) Unless NREL determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison*			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign Construction Material			
Domestic Construction Material			
Item 2:			
Foreign Construction Material			
Domestic Construction Material			

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

[Include other applicable supporting information.]

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

**ALTERNATE I (MAR 2012).**

**As prescribed in [25.1102\(c\)\(3\)](#), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:**

- (a) “Bahrainian, Mexican, or Omani construction material” means a construction material that—
  - (1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
  - (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.
- (b) Construction materials.
  - (1) This clause implements the Buy American Act ([41 U.S.C. 83](#)) by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR [12.505\(a\)\(2\)](#)). In addition, the NREL Subcontract Administrator has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.
  - (2) The Subcontractor shall use only domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this subcontract, except as provided in paragraphs (b)(3) and (b)(4) of this clause

**CLAUSE 39. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)**

*Derived from FAR 52.225-13 (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.

**CLAUSE 40. PATENT INDEMNITY-CONSTRUCTION SUBCONTRACTS (DEC 2007)**

*Derived from FAR 52.227-4*

*(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.

**CLAUSE 41. ADDITIONAL BOND SECURITY (OCT 1997)**

*Derived from FAR 52.228-2*

*(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
- (d) 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.

**CLAUSE 42. FEDERAL, STATE, AND LOCAL TAXES (APR 2003)**

*Derived from FAR 52.229-3*

*(Applies to fixed price subcontracts exceeding \$100,000.)*

- (a) Definitions, as used in this clause—
- (1) “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.
  - (2) “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.
  - (3) “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.
  - (4) “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.
  - (5) “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) The subcontract price includes all applicable Federal, State, and local taxes and duties.
- (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.

**CLAUSE 43. TAXES—FOREIGN FIXED PRICE SUBCONTRACTS (JUN 2003)**

*Derived from FAR 52.229-6*

*(Applies to fixed price subcontracts exceeding \$100,000 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—
  - (1) “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.
  - (2) “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.
  - (3) “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.
  - (4) “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.
  - (5) “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.
  - (6) 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) 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.
- (d) 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 (l) of this clause.
- (e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States/NREL 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. The Government of the United States/NREL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.

- (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 (l) 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 the Government of the United States/NREL 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.

**CLAUSE 44. PAYMENTS UNDER FIXED-PRICE CONSTRUCTION SUBCONTRACTS (SEP 2002)**

*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 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 eighth 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 ten (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/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 the NREL/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/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/Government arising by virtue of this subcontract, other than claims, in stated amounts, that the Subcontractor has specifically accepted 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 eighty (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 ninety-one-day (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.

**CLAUSE 45. ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)**

*Derived from 52.232-24 (JAN 1986)*

*(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.

**CLAUSE 46. 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.

**CLAUSE 47. 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.

**CLAUSE 48. 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.

**CLAUSE 49. 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.

**CLAUSE 50. 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.

**CLAUSE 51. 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.

**CLAUSE 52. 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.

**CLAUSE 53. 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.

**CLAUSE 54. 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.

**CLAUSE 55. 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.

**CLAUSE 56. RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR (APR 1984)**

*Derived from FAR 52.236-23*

*(Applies to architect-engineer subcontracts.)*

- (a) The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Subcontractor under this subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither NREL's review, approval or acceptance of, nor payment for, the services required under this subcontract shall be construed to operate as a waiver of any

rights under this subcontract or of any cause of action arising out of the performance of this subcontract, and the Subcontractor shall be and remain liable to NREL/Government in accordance with applicable law for all damages to NREL/Government caused by the Subcontractor's negligent performance of any of the services furnished under this subcontract.

- (c) The rights and remedies of NREL/Government provided for under this subcontract are in addition to any other rights and remedies provided by law.
- (d) If the Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**CLAUSE 57. WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1984)**

*Derived from FAR 52.236-24*

*(Applies to architect-engineer subcontracts.)*

The extent and character of the work to be done by the Subcontractor shall be subject to the general oversight, supervision, direction, control, and approval of the NREL Subcontract Administrator.

**CLAUSE 58. REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 2003)**

*Derived from FAR 52.236-25*

*(Applies to architect-engineer subcontracts.)*

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

**CLAUSE 59. 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.

**CLAUSE 60. 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.

**CLAUSE 61. STOP WORK ORDER (AUG 1989) AND ALTERNATE I - COST REIMBURSEMENT (APR 1984)**

*Derived from FAR 52.242-15*

*(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 ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, 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."

**CLAUSE 62. 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.

**CLAUSE 63. LOWER-TIER SUBCONTRACTS (OCT 2011) 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:
    - (i) A description of the supplies or services to be lower-tier subcontracted.
    - (ii) Identification of the type of lower-tier subcontract to be used.

- (iii) Identification of the proposed lower-tier subcontractor.
- (iv) The proposed lower-tier subcontract price.
- (v) 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.
- (vi) 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.
- (vii) 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.

**CLAUSE 64. LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)**

*Derived from FAR 52.244-4*

*(Applies to architect-engineer subcontracts.)*

Any lower-tier Subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the subcontract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Subcontractor shall obtain the NREL Subcontract Administrator's written consent before making any substitution for these lower-tier Subcontractors, associates, or consultants.

**CLAUSE 65. LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (SPECIAL) (DEC 2010)**

*Derived from FAR 52.244-6 (FD)*

*(Applies to subcontracts for supplies or services other than commercial items.)*

- (a) Definitions. As used in this clause—
  - (1) "Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
  - (2) "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, 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 (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41.U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the 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) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), if the lower-tier subcontract offers further subcontracting opportunities. If the lower-tier subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1,500,000 for construction of any public facility), the lower-tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (v) 52.222-35, Equal Opportunity for Veterans (Sept 2010) (38 U.S.C. 4212(a)).
- (vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
- (vii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
- (viii) 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), 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.

**CLAUSE 66. 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.

**CLAUSE 67. 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:***

- (k) 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.

**CLAUSE 68. COMMERCIAL BILL OF LADING NOTATIONS (SPECIAL) (OCT 2009)**

*Derived from FAR 52.247-1 (FEB 2006) (FD)*

*(Applies to all cost reimbursement subcontracts where transportation is a direct charge to the subcontract.) (Applies to all fixed price subcontracts where direct and actual transportation cost is a separate item in the invoice (e.g. 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 Field Office, 1617 Cole Blvd, Golden, CO 80401.”

**CLAUSE 69. 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]

**CLAUSE 70. 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—
- (i) The NREL Subcontract Administrator, and
  - (ii) 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—
    - (i) This subcontract is—
      - (A) A subcontract or agreement for ocean transportation services; or
      - (B) A construction subcontract; or
    - (ii) The supplies being transported are—
      - (A) Items the Subcontractor is reselling or distributing to the 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

**CLAUSE 71. TERMINATION FOR CONVENIENCE OF NREL/GOVERNMENT (FIXED PRICE) AND ALTERNATE I (CONSTRUCTION) (SPECIAL) (OCT 2008)**

*Derived from FAR 52.249-2 (MAY 2004) and Alternate I (SEP 1996) (FD)*

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

*(Alternate I applies to fixed price construction subcontracts exceeding \$100,000.)*

- (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's/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 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.
  - (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 the Government has or may acquire an interest; and
  - (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 subparagraph (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 may submit complete termination inventory subcontract schedules no later than sixty (60) days from the effective date of termination, unless extended in writing by the NREL Subcontract Administrator within this sixty (60)-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 one (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 one (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 one (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) The Subcontractor and the NREL Subcontract Administrator may agree upon the whole or any part of the amount 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 subparagraph (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 amended, 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 subparagraph (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 subparagraph (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/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, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to NREL/Government or to a buyer.

- (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 (i) 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 (i), 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/Government has against the Subcontractor under this clause; 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/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 forty-five (45) days from the effective date of termination unless extended in writing by the NREL Subcontract Administrator.
- (m)
  - (1) NREL 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/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 ten (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 three (3) years after final settlement. This includes all books and other evidence on the Subcontractor's costs and expenses under this subcontract. The Subcontractor shall make these records and documents available to NREL/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**

***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.

**CLAUSE 72. EXCUSABLE DELAYS (APR 1984)**

*Derived from FAR 52.249-14 (FD)*

*(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.

**CLAUSE 73. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (OCT 2011)**

*Derived from DEAR 952.204-71 (MAR 2011) (FD)*

*(Applies to all subcontracts.)*

- (a) In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements of the Department of Energy (DOE), under DOE Order 142.3 or superseding directives, relating to those countries, have been, be identified by DOE as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least sixty (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 the Government/NREL 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.

**CLAUSE 74. PUBLIC AFFAIRS (SPECIAL) (OCT 2011)**

*Derived from DEAR 952.204-75*

*(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.

**CLAUSE 75. 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.

**CLAUSE 76. INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994)**

*Derived from DEAR 952.236-71*

*(Applies to architect-engineer, design-build subcontracts.)*

NREL/Government, through any authorized representatives, has the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by NREL/Government on the premises of the Subcontractor or a lower-tier Subcontractor, the Subcontractor shall provide and shall require the lower-tier Subcontractor to provide all reasonable facilities and assistance for the safety and convenience of NREL/Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

**CLAUSE 77. PRINTING (DEC 2000)**

*Derived from DEAR 970.5208-1 (FD)*

*(Applies to all subcontracts where printing is required as this term is defined in Title I of the U.S. Government Printing and Binding Regulations.)*

- (a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than five thousand (5,000) copies of a single page, or no more than twenty-five thousand (25,000) units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

**CLAUSE 78. PROPERTY (SPECIAL) (OCT 2008)**

*Derived from DEAR 970.5245-1 (DEC 2000) and Alternate 1 (Dec 2000) (FD)*

*(Applies to all subcontracts where Government Property is to be furnished to or acquired by the Subcontractors.)*

*(Alternate 1 applies if the Subcontractor is a non-profit.)*

- (a) Furnishing of Government property.  
NREL/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/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;
- (2) Commencement of processing or use of such property in the performance of this subcontract; or
- (3) Reimbursement of the cost thereof by NREL/Government, whichever first occurs.

Property furnished by NREL/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 that 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. Upon completion or termination of this subcontract, the Government through NREL shall:

- (1) Determine if the equipment is excess;
- (2) Make the equipment available to all other Government agencies; and
- (3) Conduct an auction to dispose of the equipment if no other agency is interested in the property.

If the above does not result in disposition of the equipment, then 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/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 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) 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:
    - (i) Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel;
    - (ii) 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
    - (iii) 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.
  - (2) 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/Government for the loss, destruction, or damage.
  - (3) 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/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.

- (iii) 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/Government to recover and, therefore, shall furnish to NREL/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.
    - (i) 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.
    - (ii) 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) Employee personal responsibility and accountability for Government-owned property;
      - (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 (6) 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 (DEC 2000)**

***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 Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of subcontract).

**SECTION II. CLAUSES APPLICABLE TO SUBCONTRACTS THAT REQUIRE PERFORMANCE ON NREL-OPERATED FACILITIES**

The following clauses are applicable to subcontracts that require the Subcontractor or its lower-tier subcontractors, or other persons representing the Subcontractor, to perform work on NREL-operated facilities or Government -owned or -leased properties.

**CLAUSE 79. SECURITY AND ACCESS REQUIREMENTS (SPECIAL) (JAN 2009)**

*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 two (2) weeks. 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."
    - (i) 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).

**CLAUSE 80. WORKER SAFETY AND HEALTH REQUIREMENTS (SPECIAL) (FEB 2009)**

*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. 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.

**CLAUSE 81. DRUG-FREE WORKPLACE (MAY 2001)**

*Derived from FAR 52.223-6 (FD)*

*(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—
    - (i) The dangers of drug abuse in the workplace;
    - (ii) The Subcontractor's policy of maintaining a drug-free workplace;
    - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (3) Provide all employees engaged in performance of the 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—
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 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:
    - (i) Taking appropriate personnel action against such employee, up to and including termination; or

- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Subcontractor, if an individual, agrees by award of the 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."

**CLAUSE 82. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (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](http://www1.eere.energy.gov/femp/procurement/eep_requirements.html).

**CLAUSE 83. INSURANCE – WORK ON A GOVERNMENT INSTALLATION (SPECIAL-DESIGN-BUILD) (MAR 2009)**

*Derived from FAR 52.228-5d-b (JAN 1997)*

*(Applies to design-build subcontracts.)*

- (a) The Subcontractor shall, at its own expense, provide the maintain during the entire performance period of this subcontract at least the kinds and minimum amounts of insurance required in this clause
  - (1) Architect/Engineer Professional Liability and Errors and Omissions Insurance shall be provided and maintained during the entire performance of the subcontract and for 5 years after the completion of the work. The Subcontractor shall flow down this insurance requirement to its design-build team members and first-tier Subcontractors providing Architect/Engineer professional Services. Such flow down to design-build team members and first tiers shall not be construed to relieve the Subcontractor from its obligations under this clause.
  - (2) The Subcontractor shall, within ten (10) calendar days of the notice to proceed for work under this subcontract, obtain and maintain “All Risk” Builder’s Risk Insurance in the names of the U.S. Department of Energy and the Alliance for Sustainable Energy, LLC upon the entire structure or structures on which the work of the subcontract is to be done and all material in or adjacent thereto that is intended for use thereon to one hundred percent (100%) of the insurable value thereof. Such insurance may include a deductible provision in which case the Subcontractor will be liable for such deductions, whenever a claim arises. The loss, of any, is to be made adjustable with any payable to the U.S. Department of Energy and the Alliance for Sustainable Energy, LLC in accordance with their interests.
  - (3) 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 design-build team and 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
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

Insurance Type			
	Disease-Employee	Disease-Limit	Accident-Limit
Employer's Liability	\$1,000,000.00	\$1,000,000.00	N/A

Insurance Type		
	Per Claim	Aggregate Claims
Architect/Engineer Professional Liability and Errors and Omissions	\$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)

- (b) Unless otherwise stated in this clause, 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 Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction or other material change adversely affecting Alliance's/Government's interest in the required insurance. 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.
- (c) The Subcontractor shall insert the substance of this clause, including this paragraph (c), 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.

**CLAUSE 84. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS AND SET OFF FOR HAZARDOUS MATERIALS RESPONSE, CLEANUP, AND DISPOSAL (SPECIAL) (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.

**CLAUSE 85. AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)**

*Derived from FAR 52.236-14*

*(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.

**CLAUSE 86. PROTECTION OF NREL/GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

*Derived from FAR 52.237-2*

*(Applies to service subcontracts not involving construction to be performed on Government-owned or -leased facility.)*

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on NREL/Government installation. If the Subcontractor's failure to use reasonable care causes damage to any of this property, the Subcontractor shall replace or repair the damage at no expense to NREL/Government as the NREL Subcontract Administrator directs. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the subcontract price.

**CLAUSE 87. 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.

**CLAUSE 88. ACCESS TO AND OWNERSHIP OF RECORDS (SPECIAL) (OCT 2008)**

*Derived from DEAR 970.5204-3 (DEC 2000) (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 shall be the property of the Government and shall be delivered to NREL or the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator or the DOE Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator or the DOE Contracting Officer shall direct upon completion or termination of the subcontract.

- (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 for those records described by the Subcontract as being maintained in Privacy Act systems of records;
  - (2) Confidential Subcontractor financial information, 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 under 48 CFR 970-5232-3 Accounts, Records, and Inspection 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:
    - (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) [Reserved.]
    - (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 the Government.
- (c) Subcontract completion or termination. In the event of completion or termination of this subcontract, copies of any of the Subcontractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Contractors. 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.
- (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 the Government or its designees at all reasonable times, and the Subcontractor shall afford 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.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
  - (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of Subcontract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Subcontractor. In addition, the Subcontractor shall retain individual radiation exposure records generated in the performance of work under this Subcontract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the subcontract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
  - (g) Lower-Tier Subcontracts. The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that are of a cost-reimbursement type if any of the following factors is present:
    - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the DOE Contracting Officer or NREL Subcontract Administrator);
    - (2) The DOE Contracting Officer or NREL Subcontract Administrator notifies the Subcontractor that the lower-tier subcontract is, or involves, a critical task related to the Prime Contract; or
    - (3) The lower tier subcontract involves 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.

**CLAUSE 89. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)**

*Derived from DEAR 970.5223-1(FD)*

*(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) 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.
  - (7) 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.

**CLAUSE 90. SUSTAINABLE ACQUISITION PROGRAM (SPECIAL-CONSTRUCTION) (MAR 2011)**

*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 \$150,000, and offer opportunities for the acquisition of energy efficient or environmentally sustainable supplies or services).*

- (a) Pursuant to 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 these Executive Orders 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) Green house 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 Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Subcontractor require provision of any of the above types of products, the Subcontractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—
- (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 comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information

concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at:

<http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at:

<http://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.