

**APPENDIX D**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**SUBCONTRACTS IN EXCESS OF \$700,000**

**December 15, 2016**

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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**CLAUSE 1. LOWER-TIER SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA (OCT 2010)**

*Derived from FAR 15.406-2 (FD)*

*(Applies to subcontracts where any lower-tier subcontract is expected to exceed \$700,000, thereby requiring the lower-tier Subcontractor to submit cost or pricing data.)*

- (a) When cost or pricing data are required, the NREL Subcontractor must require the lower-tier Subcontractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must provide a copy of the executed certificate to the NREL Subcontract Administrator.

\*\*\*\*\*

**Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the NREL Subcontractor or to the NREL Subcontractor's representative in support of the NREL Subcontractor's \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the lower-tier subcontract offeror and the NREL Subcontractor that are part of the proposal.

Firm \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date of execution\*\*\* \_\_\_\_\_

\* Identify the NREL proposal or NREL subcontract, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., NREL RFP No.).

\*\*Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

[End of certificate]

\*\*\*\*\*

- (b) The certificate does not constitute a representation as to the accuracy of the lower-tier Subcontractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the lower-tier Subcontractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the lower-tier Subcontractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.
- (c) The NREL Subcontractor and lower-tier Subcontractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the lower-tier Subcontractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably

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available before normal periodic closing dates (e.g., actual indirect costs). Data within the lower-tier Subcontractor's or any tier of Subcontractor's organization on matters significant to lower-tier Subcontractor management and to the NREL Subcontractor will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

- (d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the lower-tier Subcontractor's proposal.
- (e) If cost or pricing data are requested by the NREL Subcontractor and submitted by a lower-tier subcontract offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this section.

### **CLAUSE 2. CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)**

*Derived from FAR 52.203-13 (FD)*

*(Applies to subcontracts exceeding \$5,000,000 and a performance period of more than 120 days.)*

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

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

“Full cooperation”—

- (1) Means disclosure to NREL/Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to NREL/Government auditors' and investigators' request for documents and access to employees with information;
- (2) Does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the subcontract. It does not require—
  - (i) A Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or
  - (ii) Any officer, director, owner, or employee of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and
- (3) Does not restrict a Subcontractor from—
  - (i) Conducting an internal investigation; or
  - (ii) Defending a proceeding or dispute arising under the subcontract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

“Lower-tier Subcontract” means any subcontract entered into by a lower-tier Subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Lower-tier Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another Subcontractor.

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

- (b) Code of business ethics and conduct.

- (1) Within 30 days after subcontract award, unless the NREL Subcontract Administrator establishes a longer time period, the Subcontractor shall—
  - (i) Have a written code of business ethics and conduct; and

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- (ii) Make a copy of the code available to each employee engaged in performance of the subcontract.
  - (2) The Subcontractor shall—
    - (i) Exercise due diligence to prevent and detect criminal conduct; and
    - (ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
  - (3) (i) The Subcontractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to NREL/Government, whenever, in connection with the award, performance, or closeout of this subcontract or any lower-tier subcontract thereunder, the Subcontractor has credible evidence that a Subcontractor has committed—
    - (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
    - (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).
  - (ii) NREL/Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Subcontractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by NREL/Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Subcontractor. NREL/Government may transfer documents provided by the Subcontractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.
  - (iii) If the violation relates to an order against an NREL/Government wide acquisition subcontract, a multi-agency subcontract, a multiple-award schedule subcontract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic subcontract.
- (c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this subcontract or if this subcontract is for the acquisition of a commercial item as defined at FAR 2.101. The Subcontractor shall establish the following within 90 days after subcontract award, unless the NREL Subcontract Administrator establishes a longer time period:
- (1) An ongoing business ethics awareness and compliance program.
    - (i) This program shall include reasonable steps to communicate periodically and in a practical manner the Subcontractor's standards and procedures and other aspects of the Subcontractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
    - (ii) The training conducted under this program shall be provided to the Subcontractor's principals and employees, and as appropriate, the Subcontractor's agents and lower-tier Subcontractors.

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- (2) An internal control system.
- (i) The Subcontractor's internal control system shall—
    - (A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with NREL/Government subcontracts; and
    - (B) Ensure corrective measures are promptly instituted and carried out.
  - (ii) At a minimum, the Subcontractor's internal control system shall provide for the following:
    - (A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.
    - (B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Subcontractor's code of business ethics and conduct.
    - (C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Subcontractor's code of business ethics and conduct and the special requirements of NREL/Government contracting, including—
      - (1) Monitoring and auditing to detect criminal conduct;
      - (2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
      - (3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.
    - (D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
    - (E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
    - (F) Timely disclosure, in writing, to the agency OIG, with a copy to the NREL/Government, whenever, in connection with the award, performance, or closeout of any NREL/Government subcontract performed by the Subcontractor or a lower-tier subcontract thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or lower-tier Subcontractor of the Subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).
      - (1) If a violation relates to more than one NREL/Government contract, the Subcontractor may

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- make the disclosure to the agency OIG and NREL/Government responsible for the largest dollar value contract impacted by the violation.
- (2) If the violation relates to an order against an NREL/Government-wide acquisition subcontract, a multi-agency subcontract, a multiple-award schedule subcontract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Subcontractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic subcontract, and the respective agencies' contracting officers/NREL Subcontract Administrators.
  - (3) The disclosure requirement for an individual subcontract continues until at least 3 years after final payment on the subcontract.
  - (4) NREL/Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.
- (G) Full cooperation with NREL/Government agencies responsible for audits, investigations, or corrective actions.
- (d) Lower-tier Subcontracts.
- (1) The Subcontractor shall include the substance of this clause, including this paragraph (d), in lower-tier subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.
  - (2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer/NREL Subcontract Administrator.

### **CLAUSE 3. PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)**

*Derived from FAR 52.215-10*

*(Applies to subcontracts exceeding \$700,000 where cost or pricing data is required.)*

- (a) If any price, including profit or fee, negotiated in connection with this subcontract, or any cost reimbursable under this subcontract, was increased by any significant amount because-
  - (1) The Subcontractor or a lower-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
  - (2) A lower-tier Subcontractor or prospective lower-tier Subcontractor furnished the Subcontractor certified cost or pricing data that were not complete, accurate, and current as certified in the lower-tier Subcontractor's Certificate of Current Cost or Pricing Data; or
  - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction.
- (b) Any reduction in the subcontract price under paragraph (a) of this clause due to defective data from a prospective lower-tier Subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which-



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- (1) The actual lower-tier subcontract; or
  - (2) The actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor; provided, that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (c) (1) If the NREL Subcontract Administrator determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
- (i) The Subcontractor or lower-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The NREL Subcontract Administrator should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier Subcontractor took no affirmative action to bring the character of the data to the attention of the NREL Subcontract Administrator.
  - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
  - (iv) The Subcontractor or lower-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c) (2) (ii) of this clause, an offset in an amount determined appropriate by the NREL Subcontract Administrator based upon the facts shall be allowed against the amount of a subcontract price reduction if—
- (A) The Subcontractor certifies to the NREL Subcontract Administrator that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
  - (B) The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
- (A) The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
  - (B) The NREL/Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the NREL/Government at the time such overpayment is repaid-
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date NREL/Government is

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- repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Subcontractor or lower-tier Subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

### **CLAUSE 4. PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA-MODIFICATIONS (AUG 2011)**

*Derived from FAR 52.215-11*

*(Applies when a modification to the subcontract involving a pricing adjustment (both increases and decreases) is expected to exceed \$700,000, thereby requiring the Subcontractor to submit cost or pricing data, whether or not cost or pricing data were initially required.)*

- (a) This clause shall become operative only for any modification to this subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this subcontract, was increased by any significant amount because—
  - (1) The Subcontractor or a lower-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,
  - (2) A lower-tier Subcontractor or prospective lower-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or
  - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the subcontract price under paragraph (b) of this clause due to defective data from a prospective lower-tier Subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which-
  - (1) The actual lower-tier subcontract; or
  - (2) The actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor; provided, that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the NREL Subcontract Administrator determines under paragraph (b) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
  - (i) The Subcontractor or lower-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

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- (ii) The NREL Subcontract Administrator should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier Subcontractor took no affirmative action to bring the character of the data to the attention of the NREL Subcontract Administrator.
  - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
  - (iv) The Subcontractor or lower-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the NREL Subcontract Administrator based upon the facts shall be allowed against the amount of a subcontract price reduction if-
- (A) The Subcontractor certifies to the NREL Subcontract Administrator that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
  - (B) The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if-
- (A) The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
  - (B) The NREL/Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay NREL/Government at the time such overpayment is repaid-
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the NREL/Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26U.S.C. 6621(a)(2); and
  - (2) A penalty equal to the amount of the overpayment, if the Subcontractor or lower-tier Subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**CLAUSE 5. LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA (OCT 2010)**

*Derived from FAR 52.215-12 (FD)*

*(Applies to subcontracts where the clause entitled "Subcontract Price Reduction for Defective Cost or Pricing Data" is included and any lower-tier subcontract is expected to exceed \$700,000, thereby requiring the lower-tier Subcontractor to submit cost or pricing data.)*

- (a) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Subcontractor shall require the lower-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include information reasonably required to explain the Subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
- (b) The Subcontractor shall require the lower-tier Subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (A) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- (c) In each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Subcontractor shall insert either-
  - (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
  - (2) The substance of the clause at FAR 52.215-13, Lower-tier Subcontractor Cost or Pricing Data-Modifications.

**CLAUSE 6. LOWER-TIER SUBCONTRACT OR COST OR PRICING DATA—  
MODIFICATIONS (OCT 2010)**

*Derived from FAR 52.215-13 (FD)*

*(Applies to subcontracts where the clause entitled "Subcontract Price Reduction for Defective Cost or Pricing Data-Modifications" is included. And, applies to a Subcontractor's lower-tier subcontract modification involving a pricing adjustment (both increases and decreases) that is expected to exceed \$700,000, thereby requiring the lower-tier Subcontractor to submit cost or pricing data, whether or not cost or pricing data were initially required.)*

- (a) The requirements of paragraphs (b) and (c) of this clause shall-
  - (1) Become operative only for any modification to this lower-tier subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and
  - (2) Be limited to such modifications.
- (b) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Subcontractor shall require the lower-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to

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- include information reasonably required to explain the Subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
- (c) The Subcontractor shall require the lower-tier Subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
  - (d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

### **CLAUSE 7. SMALL BUSINESS LOWER-TIER SUBCONTRACTING PLAN (SPECIAL) (NOV 2016) INCORPORATING ALTERNATE II (OCT 2001)**

*Derived from FAR 52.219-9 (FD) (OCT 2015)*

*(Applies to subcontracts exceeding \$700,000 with lower-tier subcontracting possibilities or subcontracts exceeding \$1,500,000 for construction of any public facility.)*

- (a) This clause does not apply to small business concerns.
- (b) Definitions. As used in this clause—
  - (1) "Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).
  - (2) "Commercial item" means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.
  - (3) "Commercial plan" means a lower-tier subcontracting plan (including goals) that covers the Offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
  - (4) "Electronic Subcontracting Reporting System (eSRS)" means the Government-wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.
  - (5) "Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).
  - (6) "Individual lower-tier subcontract plan" means a lower-tier subcontracting plan that covers the entire subcontract period (including option periods), applies to

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- a specific subcontract, and has goals that are based on the offeror's planned lower-tier subcontracting in support of the specific subcontract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the subcontract.
- (7) "Master plan" means a lower-tier subcontracting plan that contains all the required elements of an individual lower-tier subcontracting plan, except goals, and may be incorporated into individual lower-tier subcontract plans, provided the master plan has been approved.
  - (8) "Lower-tier subcontract" means any agreement (other than one involving an employer-lower-tier employee relationship) entered into by an NREL Subcontractor or lower-tier Subcontractor calling for supplies or services required for performance of the subcontract or lower-tier subcontract.
- (c) The Offeror, upon request by the NREL Subcontract Administrator, shall submit and negotiate a lower-tier subcontracting plan, where applicable, that separately addresses lower-tier subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual lower-tier subcontract plan, the plan must separately address lower-tier subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic subcontract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant subcontract. The lower-tier subcontracting plan shall be negotiated within the time specified by the NREL Subcontract Administrator. Failure to submit and negotiate the lower-tier subcontracting plan shall make the Offeror ineligible for award of a subcontract.
- (d) The Offeror's lower-tier subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned lower-tier subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as Subcontractors. The Offeror shall include all lower-tier subcontracts that contribute to subcontract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):
    - (i) Lower-tier subcontracts awarded to an ANC or Indian tribe shall be counted towards the lower-tier subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
    - (ii) Where one or more lower-tier Subcontractors are in the lower-tier subcontract tier between the Subcontractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Subcontractor(s) to count the lower-tier subcontract towards its small business and small disadvantaged business lower-tier subcontracting goals.
      - (A) In most cases, the appropriate Subcontractor is the Subcontractor that awarded the lower-tier subcontract to the ANC or Indian tribe.

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- (B) If the ANC or Indian tribe designates more than one Subcontractor to count the lower-tier subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total lower-tier subcontract award to each Subcontractor. The sum of the amounts designated to various Subcontractors cannot exceed the total value of the lower-tier subcontract.
  - (C) The ANC or Indian tribe shall give a copy of the written designation to the NREL Subcontract Administrator, and the lower-tier Subcontractors in between the Subcontractor and the ANC or Indian tribe within 30 days of the date of the lower-tier subcontract award.
  - (D) If the NREL Subcontract Administrator does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the lower-tier subcontract award, the Subcontractor that awarded the lower-tier subcontract to the ANC or Indian tribe will be considered the designated Subcontractor.
- (2) A statement of—
- (i) Total dollars planned to be subcontracted to lower-tiers for an individual subcontract plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected lower-tier subcontracts to support the sales for a commercial plan;
  - (ii) Total dollars planned to be subcontracted to lower-tier small business concerns (including ANC and Indian tribes);
  - (iii) Total dollars planned to be subcontracted to lower-tier veteran-owned small business concerns;
  - (iv) Total dollars planned to be subcontracted to lower-tier service-disabled veteran-owned small business;
  - (v) Total dollars planned to be subcontracted to lower-tier HUBZone small business concerns;
  - (vi) Total dollars planned to be subcontracted to lower-tier small disadvantaged business concerns (including ANCs and Indian tribes); and
  - (vii) Total dollars planned to be subcontracted to lower-tier women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for lower-tier subcontracting to—
- (i) Small to lower-tiers business concerns;
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns; and
  - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the lower-tier subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and

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women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing lower-tier subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the Offeror included indirect costs in establishing lower-tier subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
  - (i) Small business concerns (including ANC and Indian tribes);
  - (ii) Veteran-owned small business concerns;
  - (iii) Service-disabled veteran-owned small business concerns;
  - (iv) HUBZone small business concerns;
  - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
  - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the Offeror's lower-tier subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for lower-tier subcontracts.
- (9) Assurances that the Offeror will include the clause of this subcontract entitled "Utilization of Small Business Concerns" in all lower-tier subcontracts that offer further lower-tier subcontracting opportunities, and that the Offeror will require all lower-tier Subcontractors (except small business concerns) that receive lower-tier subcontracts in excess of \$700,000 (\$1,500,000 for construction of any public facility) with further lower-tier subcontracting possibilities to adopt a lower-tier subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will—
  - (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that NREL/Government can determine the extent of compliance by the Offeror with the lower-tier subcontracting plan;
  - (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on lower-tier subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns,



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- and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
- (iv) Ensure that its lower-tier Subcontractors with lower-tier subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
  - (v) Provide its subcontract number, its DUNS number, and the email address of NREL/Government official responsible for acknowledging receipt of or rejecting the ISRs, to all lower-tier Subcontractors with lower-tier subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and
  - (vi) Require that each lower-tier Subcontractor with a lower-tier subcontracting plan provide the subcontract number, its own DUNS number, and the email address of NREL/Government official responsible for acknowledging or rejecting the ISRs, to its lower-tier Subcontractors with lower-tier subcontracting plans.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—
    - (A) Whether small business concerns were solicited and, if not, why not;
    - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
    - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
    - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
    - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
    - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
    - (G) If applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact—
    - (A) Trade associations;

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- (B) Business development organizations;
  - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
  - (D) Veterans service organizations.
  - (v) Records of internal guidance and encouragement provided to buyers through—
    - (A) Workshops, seminars, training, etc.; and
    - (B) Monitoring performance to evaluate compliance with the program's requirements.
  - (vi) On a subcontract-by-subcontract basis, records to support award data submitted by the Offeror to NREL/Government, including the name, address, and business size of each lower-tier Subcontractor. Subcontractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient subcontract performance, the Subcontractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Subcontractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business Subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
  - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
  - (3) Counsel and discuss lower-tier subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
  - (4) Confirm that a lower-tier Subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.
  - (5) Provide notice to lower-tier Subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a lower-tier subcontract that is to be included as part or all of a goal contained in the Subcontractor's lower-tier subcontracting plan.
  - (6) For all competitive lower-tier subcontracts over \$150,000 in which a small business concern received a small business preference, upon determination of the successful lower-tier subcontract Offeror, the Subcontractor must inform each unsuccessful small business subcontract Offeror in writing of the name and location of the apparent successful Offeror prior to award of the subcontract.

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- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the lower-tier subcontracting plan required of the Offeror by this clause; provided—
  - (1) The master plan has been approved;
  - (2) The Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the NREL Subcontract Administrator; and
  - (3) Goals and any deviations from the master plan deemed necessary by the NREL Subcontract Administrator to satisfy the requirements of this subcontract are set forth in the individual lower-tier subcontracting plan.
- (g) A commercial plan is the preferred type of lower-tier subcontracting plan for Subcontractors furnishing commercial items. The commercial plan shall relate to the Offeror's planned lower-tier subcontracting generally, for both commercial and NREL/Government business, rather than solely to the NREL subcontract. Once the Subcontractor's commercial plan has been approved, NREL will not require another lower-tier subcontracting plan from the same Subcontractor while the plan remains in effect, as long as the product or service being provided by the Subcontractor continues to meet the definition of a commercial item. A Subcontractor with a commercial plan shall comply with the reporting requirements stated in subparagraph (d)(10) of this clause by submitting one SSR in eSRS for all subcontracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the NREL Subcontract Administrator who approved the plan. This report shall be submitted within thirty (30) days after the end of the NREL/Government's fiscal year.
- (h) Prior compliance of the Offeror with other such lower-tier subcontracting plans under previous subcontracts will be considered by the NREL Subcontract Administrator in determining the responsibility of the Offeror for award of the subcontract.
- (i) A subcontract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing lower-tier subcontract plan.
- (j) Lower-tier subcontracting plans are not required from lower-tier Subcontractors when the lower-tier Subcontractor provides a commercial item subject to the clause at [52.244-6](#), Lower-tier Subcontracts for Commercial Items.
- (k) The failure of the Subcontractor or lower-tier Subcontractor to comply in good faith with—
  - (1) The clause of this subcontract entitled "Utilization Of Small Business Concerns;" or
  - (2) An approved plan required by this clause, shall be a material breach of the subcontract.
- (l) The Subcontractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Subcontractor or lower-tier Subcontractor are not included in these reports. Lower-tier subcontract award data reported by Subcontractors and lower-tier Subcontractors shall be limited to awards made to their immediate next-tier lower-tier Subcontractors. Credit cannot be taken for awards made to lower tier Subcontractors, unless the Subcontractor or lower-tier Subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only lower-tier subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of lower-tier subcontracts under a subcontract awarded by the State

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Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

- (1) ISR. This report is not required for commercial plans. The report is required for each subcontract containing an individual lower-tier subcontract plan.
  - (i) The report shall be submitted semi-annually during subcontract performance for the periods ending March 31 and September 30. A report is also required for each subcontract within 30 days of subcontract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the NREL Subcontract Administrator. Reports are required when due, regardless of whether there has been any lower-tier subcontracting activity since the inception of the subcontract or the previous reporting period.
  - (ii) When a lower-tier subcontracting plan contains separate goals for the basic subcontract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic subcontract, the first option, and the second option.
  - (iii) The authority to acknowledge receipt or reject the ISR resides—
    - (A) In the case of the Subcontractor, with the NREL Subcontract Administrator; and
    - (B) In the case of a lower-tier subcontract with a lower-tier subcontracting plan, with the entity that awarded the lower-tier subcontract.
- (2) SSR.
  - (i) Reports submitted under individual subcontract plans—
    - (A) This report encompasses all subcontracting under subcontracts and lower-tier subcontracts with the awarding agency, regardless of the dollar value of the lower-tier subcontracts.
    - (B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.
    - (C) If a Subcontractor and/or lower-tier Subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's subcontracts, provided at least one of that agency's subcontracts is over \$700,000 (over \$1,500,000 for construction of a public facility) and contains a lower-tier subcontracting plan.
    - (D) [RESERVED.]
    - (E) Lower-tier subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.
    - (F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by lower-tier Subcontractors with lower-tier subcontracting plans, resides with the Government agency awarding the prime contracts unless state otherwise in the subcontract.

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- (ii) Reports submitted under a commercial plan—
  - (A) The report shall include all lower-tier subcontract awards under the commercial plan in effect during NREL/Government's fiscal year.
  - (B) The report shall be submitted annually, within thirty (30) days after the end of NREL/Government's fiscal year.
  - (C) If a Subcontractor has a commercial plan and is performing work for more than one executive agency, the Subcontractor shall specify the percentage of dollars attributable to each agency from which subcontracts for commercial items were received.
  - (D) The authority to acknowledge or reject SSRs for commercial plans resides with the NREL Subcontract Administrator who approved the commercial plan.
- (iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include lower-tier subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the Subcontractor and/or lower-tier Subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within ninety (90) days of submitting the year-end SSR. For a commercial plan, the Subcontractor may obtain from each of its lower-tier Subcontractors a predominant NAICS Industry Subsector and report all awards to that lower-tier Subcontractor under its predominant NAICS Industry Subsector.

### **ALTERNATE II (OCT 2001).**

**As prescribed in [19.708](#) (b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:**

- (c) Proposals submitted in response to this solicitation shall include a lower-tier subcontracting plan that separately addresses lower-tier subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic subcontract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant subcontract. The lower-tier subcontracting plan shall be negotiated within the time specified by the NREL Subcontract Administrator. Failure to submit and negotiate a lower-tier subcontracting plan shall make the Offeror ineligible for award of a subcontract.

**CLAUSE 8. LIQUIDATED DAMAGES – LOWER-TIER SUBCONTRACTING PLAN (JAN 1999)**

*Derived from FAR 52.219-16 (Jan 1999)(FD)*

*(Applies to subcontracts where the clause FAR 52.219-9 “Small Business Lower-tier Subcontracting Plan” is applicable.)*

- (a) “Failure to make a good faith effort to comply with the lower-tier subcontracting plan”, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the lower-tier subcontracting plan approved under the clause in this subcontract entitled “Small Business (Lower-tier) Subcontracting Plan,” or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual lower-tier subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual lower-tier subcontracting dollars attributable to NREL/Government subcontracts covered by the commercial plan. If, at subcontract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Subcontractor has failed to meet its lower-tier subcontracting goals and the NREL Subcontract Administrator decides in accordance with paragraph (c) of this clause that the Subcontractor failed to make a good faith effort to comply with its lower-tier subcontracting plan, established in accordance with the clause in this subcontract entitled “Small Business (Lower-tier) Subcontracting Plan,” the Subcontractor shall pay NREL/Government liquidated damages in an amount stated. The amount of probable damages attributable to the Subcontractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Subcontractor failed to achieve each lower-tier subcontract goal.
- (c) Before the NREL Subcontract Administrator makes a final decision that the Subcontractor has failed to make such good faith effort, the NREL Subcontract Administrator shall give the Subcontractor written notice specifying the failure and permitting the Subcontractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the NREL Subcontract Administrator finds that the Subcontractor failed to make a good faith effort to comply with the lower-tier subcontracting plan, the NREL Subcontract Administrator shall issue a final decision to that effect and require that the Subcontractor pay NREL/Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the NREL Subcontract Administrator under this clause on behalf of NREL subcontracts and all agencies with contracts covered by the commercial plan.
- (e) The Subcontractor shall have the right of appeal, under the clause in this subcontract entitled, Disputes, from any final decision of the NREL Subcontract Administrator.
- (f) Liquidated damages shall be in addition to any other remedies that NREL/ Government may have.

**CLAUSE 9. BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2012)**

*Derived from 52.225-11 (SEP 2010)*

*(Applies to construction subcontracts valued at \$7,804,000 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,

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- 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, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, 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—



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- (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.
- (g) Construction materials.
- (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\(a\)\(2\)](#)). 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.
- (h) 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.

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- (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, 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.
- (i) 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:

<b>Foreign and Domestic Construction Materials Price Comparison*</b>			
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 (JUN 2009).**

**As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian, Mexican, or Omani construction material” and “Mexican 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—

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- (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. 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\(a\)\(2\)](#)). 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 10. COST ACCOUNTING STANDARDS (MAY 2012)**

*Derived from FAR 52.230-2*

*(Applies to all subcontracts (except subcontracts with Educational Institutions) exceeding \$700,000 unless the subcontract is subject to modified CAS coverage under 48 CFR 9903.201-2, and except subcontracts exempt under 48 CFR 9903.201-1, such exemptions include, but are not limited to: firm fixed price subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data; subcontracts with small businesses; and subcontracts for commercial items.)*

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Subcontractor, in connection with this contract, shall—
  - (1) (CAS-covered Subcontracts Only) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-tier subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the NREL Subcontract Administrator that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the NREL/Government.
  - (2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting subcontract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract

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and the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a subcontract or lower-tier subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such subcontract or lower-tier subcontract.
- (4)
  - (i) Agree to an equitable adjustment as provided in the Changes clause of this subcontract if the subcontract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.
  - (ii) Negotiate with the NREL Subcontract Administrator to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the NREL/Government.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.
- (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier Subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the NREL/Government. Such adjustment shall provide for recovery of the increased costs to NREL/Government, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621](#) (a)(2)) for such period, from the time the payment by NREL/Government was made to the time the adjustment is effected. In no case shall NREL/Government recover costs greater than the increased cost to NREL/Government, in the aggregate, on the relevant subcontracts subject to the price adjustment, unless the Subcontractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to NREL/Government.
  - (b) If the parties fail to agree whether the Subcontractor or a lower-tier Subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by NREL/Government, such failure to agree will constitute a dispute under the Disputes clause of this subcontract.
  - (c) The Subcontractor shall permit any authorized representatives of NREL/Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

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

**CLAUSE 11. DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES  
(MAY 2012)**

*Derived from FAR 52.230-3*

*(Applies to subcontracts exceeding \$700,000, but less than \$50 million, when the Subcontractor certifies it is eligible for and elects to use modified CAS coverage. For Educational Institutions substitute the relevant sections of 48 CFR 9905.)*

- (a) The Subcontractor, in connection with this subcontract, shall—
- (1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this subcontract as indicated in 48 CFR Part 9904.
  - (2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Subcontractor has notified the NREL Subcontract Administrator that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the NREL/Government.
  - (3)
    - (i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by either NREL/Government or the Subcontractor, and the Subcontractor agrees to negotiate with the NREL Subcontract Administrator the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this subcontract, and the Disclosure Statement, if affected, must be amended accordingly.
    - (ii) The Subcontractor shall, when the parties agree to a change to a cost accounting practice and the NREL Subcontract Administrator has made the finding required in 48 CFR 9903.201-6(c), that the change is desirable and not detrimental to the interests of NREL/Government, negotiate an equitable adjustment as provided in the Changes clause

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- of this subcontract. In the absence of the required finding, no agreement may be made under this subcontract clause that will increase costs paid by NREL/Government.
- (4) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier Subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by NREL/Government. Such adjustment shall provide for recovery of the increased costs to NREL/Government together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)), from the time the payment by the NREL/Government was made to the time the adjustment is effected.
  - (b) If the parties fail to agree whether the Subcontractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Disputes clause of this subcontract.
  - (c) The Subcontractor shall permit any authorized representatives of NREL/Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
  - (d) The Subcontractor shall include in all negotiated lower-tier subcontracts, which the Subcontractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other lower-tier subcontracts of any tier, except that—
    - (1) If the lower-tier subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection [30.201-4](#) of the Federal Acquisition Regulation shall be inserted.
    - (2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000.
    - (3) The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

### **CLAUSE 12. COST ACCOUNTING STANDARDS - EDUCATIONAL INSTITUTIONS (MAY 2012)**

*Derived from FAR 52.230-5 (FD)*

*(Applies to all subcontracts with Educational Institutions exceeding \$700,000 unless the subcontract is subject to 48 CFR 9903.201-2, and except subcontracts exempt under 48 CFR 9903.201-1; including, but not limited to firm fixed price subcontracts awarded to an Educational Institution on the basis of adequate price competition without submission of cost or pricing data.)*

- (a) Unless the subcontract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Subcontractor, in connection with this subcontract, shall—
  - (1) (CAS-covered Subcontracts Only). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-

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tier subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the NREL Subcontract Administrator that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of NREL/Government.

- (2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting subcontract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Subcontractor's cost accounting practices be made after the date of this subcontract award, the change must be applied prospectively to this subcontract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a subcontract or lower-tier subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such subcontract or lower-tier subcontract.
- (4)
  - (i) Agree to an equitable adjustment as provided in the Changes clause of this subcontract if the subcontract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.
  - (ii) Negotiate with the NREL Subcontract Administrator to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by NREL/Government.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.
  - (iv) Agree to an equitable adjustment as provided in the Changes clause of this subcontract, if the subcontract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of subcontract award, requires the Subcontractor to make a change to the Subcontractor's established cost accounting practices.

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- (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier Subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by NREL/Government. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)) for such period, from the time the payment by NREL/Government was made to the time the adjustment is effected. In no case shall NREL/Government recover costs greater than the increased cost to NREL/Government, in the aggregate, on the relevant subcontracts subject to the price adjustment, unless the Subcontractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to NREL/Government.
- (b) If the parties fail to agree whether the Subcontractor or a lower-tier Subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by NREL/Government, such failure to agree will constitute a dispute under the Disputes clause of this subcontract.
- (c) The Subcontractor shall permit any authorized representatives of NREL/Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts which the Subcontractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other lower-tier subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the lower-tier Subcontractor's award date or, if the lower-tier Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier Subcontractor's signed Certificate of Current Cost or Pricing Data, except that—
  - (1) If the lower-tier subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;
  - (2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000; and
  - (3) The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

### **CLAUSE 13. ADMINISTRATION OF COST ACCOUNTING STANDARDS (OCT 2011)**

*Derived from FAR 52.230-6 (JUN 2010) (FD)*

*(Applies to subcontracts where any of the following clauses are applicable: (i) Cost Accounting Standards; (ii) Disclosure and Consistency of Cost Accounting Practices; or (iii) Cost Accounting Standards – Educational Institutions.)*

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this subcontract, the Subcontractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause. When the context so indicates, the following substitutions shall be incorporated into this paragraphs (a) through (n): the terms "Subcontractor" and "Lower-tier Subcontractor" shall be substituted for "Contractor" and "Subcontractor" respectively; "Government and NREL" shall be substituted for "Government"; and "CFAO and NREL Subcontract Administrator" shall be substituted for "CFAO."



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

- (1) “Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or Subcontractor—
  - (i) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or
  - (ii) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.
- (2) “Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.
- (3) “Desirable change” means a compliant change to a Contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.
- (4) “Fixed-price contracts and subcontracts” means—
  - (i) Fixed-price contracts and subcontracts described at FAR [16.202](#), [16.203](#), (except when price adjustments are based on actual costs of labor or material, described at [16.203-1\(a\)\(2\)](#)), and [16.207](#);
  - (ii) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR [Subpart 16.4](#));
  - (iii) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR [Subpart 16.5](#)); and
  - (iv) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR [Subpart 16.6](#)).
- (5) “Flexibly-priced contracts and subcontracts” means—
  - (i) Fixed-price contracts and subcontracts described at FAR [16.203-1\(a\)\(2\)](#), [16.204](#), [16.205](#), and [16.206](#);
  - (ii) Cost-reimbursement contracts and subcontracts (FAR [Subpart 16.3](#));
  - (iii) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR [Subpart 16.4](#));
  - (iv) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR [Subpart 16.5](#)); and
  - (v) The materials portion of time-and-materials contracts and subcontracts (FAR [Subpart 16.6](#)).
- (6) “Noncompliance” means a failure in estimating, accumulating, or reporting costs to—
  - (i) Comply with applicable CAS; or
  - (ii) Consistently follow disclosed or established cost accounting practices.
- (7) “Required change” means—
  - (i) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or
  - (ii) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in

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compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

- (8) “Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.
- (b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR [52.230-2](#), Cost Accounting Standards; paragraph (a)(4) of the clause at FAR [52.230-3](#), Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(4) of the clause at FAR 52.230-4, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns; or paragraph (a)(2) of the clause at FAR [52.230-5](#), Cost Accounting Standards—Educational Institution.
  - (1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.
  - (2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR [52.230-2](#); or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR [52.230-5](#); submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.
  - (3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR [52.230-2](#) and FAR [52.230-5](#); or with paragraph (a)(3) of the clause at FAR [52.230-3](#), submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.
  - (4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR [52.230-2](#) and FAR [52.230-5](#); or by paragraph (a)(4) of the clause at FAR [52.230-3](#))—
    - (i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or
    - (ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.
- (c) When requested by the CFAO, submit on or before a date specified by the CFAO—
  - (1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;
  - (2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

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- (3) For any request for a desirable change that is based on the criteria in FAR [30.603-2\(b\)\(3\)\(ii\)](#), the data necessary to demonstrate the required cost savings; and
  - (4) For any request for a desirable change that is based on criteria other than that in FAR [30.603-2\(b\)\(3\)\(ii\)](#), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.
- (d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—
- (1) Calculate the cost impact in accordance with paragraph (f) of this clause;
  - (2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:
    - (i) A representative sample of affected CAS-covered contracts and subcontracts.
    - (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:
      - (A) Fixed-price contracts and subcontracts.
      - (B) Flexibly-priced contracts and subcontracts.
    - (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;
  - (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
    - (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
      - (A) Fixed-price contracts and subcontracts.
      - (B) Flexibly-priced contracts and subcontracts.
    - (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:
      - (A) Fixed-price contracts and subcontracts.
      - (B) Flexibly-priced contracts and subcontracts; and
  - (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—
- (1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;
  - (2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—
    - (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and
    - (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;
  - (3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and
  - (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

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- (f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:
- (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).
  - (2) For unilateral changes—
    - (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
      - (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
      - (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
    - (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
      - (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.
      - (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
    - (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and
    - (iv) Calculate the increased cost to the Government in the aggregate.
  - (3) For equitable adjustments for required or desirable changes—
    - (i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and
    - (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.
- (g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:
- (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
  - (2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:
    - (i) A representative sample of affected CAS-covered contracts and subcontracts.

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- (ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.
    - (iii) Any other method that provides a reasonable approximation of the total increase or decrease.
  - (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
    - (i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
      - (A) Fixed-price contracts and subcontracts.
      - (B) Flexibly-priced contracts and subcontracts.
    - (ii) The increased or decreased cost to the Government for each of the following groups:
      - (A) Fixed-price contracts and subcontracts.
      - (B) Flexibly-priced contracts and subcontracts.
    - (iii) The total overpayments and underpayments made by the Government during the period of noncompliance.
  - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:
- (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
  - (2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—
    - (i) Include only those affected CAS-covered contracts and subcontracts having—
      - (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and
      - (B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and
    - (ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.
  - (3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.
  - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:
- (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).
  - (2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

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- (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.
- (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.
- (3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
  - (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.
  - (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.
- (4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.
- (5) Calculate the increased cost to the Government in the aggregate.
- (j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:
  - (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.
  - (2) Issue a final decision in accordance with FAR [33.211](#) and unilaterally adjust the contract(s) by the estimated amount of the cost impact.
- (k) Agree to—
  - (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR [52.230-2](#) and [52.230-5](#); or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR [52.230-3](#) and FAR [52.230-4](#); and
  - (2) Repay the Government for any aggregate increased cost paid to the Contractor.
- (l) For all subcontracts subject to the clauses at FAR [52.230-2](#), [52.230-3](#), [52.230-4](#), or [52.230-5](#)—
  - (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);
  - (2) Include the substance of this clause in all negotiated subcontracts; and

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- (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:
  - (i) Subcontractor's name and subcontract number.
  - (ii) Dollar amount and date of award.
  - (iii) Name of Contractor making the award.
- (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—
  - (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
  - (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.
- (n) For subcontracts containing the clause or substance of the clause at FAR [52.230-2](#), FAR [52.230-3](#), FAR 52.230-4 or FAR [52.230-5](#), require the Subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the Subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

### **CLAUSE 14. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010) WITH ALTERNATE 1 (DEC 2000)**

*Derived from DEAR 970.5232-3*

*(Applies to subcontracts that include FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data-Modifications.)*

- (a) Accounts. The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, negotiated fixed amounts, and fee accruals under this subcontract; and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to NREL and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this subcontract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause 970.5204-3, Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Subcontractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of Subcontractors' records. The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed-price or unit-price lower-tier subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor of any tier, to either conduct an audit of the lower-tier Subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the NREL Subcontract Administrator.
- (d) Disposition of records. Except as agreed upon by NREL/Government and the Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Subcontractor in connection with the work under this subcontract, other applicable credits, and fee accruals under this subcontract, shall

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- be the property of the Government, and shall be delivered to NREL/Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator/Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator/Contracting Officer shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as otherwise provided in this subcontract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by NREL/Government and the Subcontractor.
- (e) Reports. The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this subcontract as the NREL Subcontract Administrator/Contracting Officer may from time to time require.
  - (f) Inspections. The DOE/NREL shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time and in such manner as it shall deem appropriate.
  - (g) Lower-tier Subcontracts. The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier Subcontractor.
  - (h) Comptroller general.
    - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's or lower-tier Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder and to interview any current employee regarding such transactions.
    - (2) This paragraph may not be construed to require the Subcontractor or lower-tier Subcontractor to create or maintain any record that the Subcontractor or lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
    - (3) Nothing in this subcontract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this subcontract.
  - (i) Internal audit. The Subcontractor agrees to design and maintain an internal audit plan and an internal audit organization.
    - (1) Upon subcontract award, the exercise of any subcontract option, or the extension of the subcontract, the Subcontractor must submit to the NREL Subcontract Administrator for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—
      - (i) The internal audit organization's placement within the Subcontractor's organization and its reporting requirements;
      - (ii) The audit organization's size and the experience and educational standards of its staff;
      - (iii) The audit organization's relationship to the corporate entities of the Subcontractor;
      - (iv) The standards to be used in conducting the internal audits;



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- (v) The overall internal audit strategy of this subcontract, considering particularly the method of auditing costs incurred in the performance of the subcontract;
  - (vi) The intended use of external audit resources;
  - (vii) The plan for audit of lower-tier subcontracts, both pre-award and post-award; and
  - (viii) The schedule for peer review of internal audits by other Subcontractor internal audit organizations, or other independent third party audit entities approved by the NREL Subcontract Administrator.
- (2) By each January 31 of the subcontract performance period, the Subcontractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the Subcontractor's system of business, financial, or management controls.
- (3) By each June 30 of the subcontract performance period, the Subcontractor must submit to the NREL Subcontract Administrator an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and Subcontractor management systems described in the internal audit design.
- (4) The NREL Subcontract Administrator may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
- (j) Remedies. If at any time during subcontract performance, the NREL Subcontract Administrator determines that unallowable costs were claimed by the Subcontractor to the extent of making the Subcontractor's management controls suspect, or the Subcontractor's management systems that validate costs incurred and claimed suspect, the NREL Subcontract Administrator may, in his or her sole discretion, require the Subcontractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the NREL Subcontract Administrator, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the Subcontractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this subcontract.

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

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