

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
CONSTRUCTION CONTRACT
by and between

Company
Street or PO Address
City, State Zip Code

South Dakota Science and Technology Authority
630 East Summit Street
Lead, SD 57754

Referred to as “Contractor”

Referred to as “SDSTA”

PROJECT: ELECTRICAL SERVICES
Contract #2018-21

THIS CONTRACT, made effective the XXth day of Month, 201X, is made for the described services with the Contractor for the consideration stated herein:

I. THE SCOPE OF WORK OF THE CONTRACTOR

- A. The Contractor shall provide and furnish all of the supervision, plant, labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner and ready for operation all the Work required to provide electrical services, more fully described in the attached Scope of Work, more fully described in the attached Scope of Work, as per request from the SDSTA in strict compliance with the Contractor's Proposal and any other Contract Documents herein mentioned which are a part of this Contract. Each request and the Contractor's Proposal in response thereto shall be referred to hereinafter as the “Work.” Contractor Representative (email) shall be the Contractor's designated representative in all matters pertaining to this Contract.
- B. **CONTRACT DOCUMENTS:** The following documents and any other documents incorporated in them by reference constitute the Contract Documents:
1. This Contract, including:
 - Insurance Requirements attached as Exhibit A.
 - Environment Health and Safety Requirements attached as Exhibit B.
 - Scope of Work attached as Exhibit C.
 - Contractor's Proposal attached as Exhibit D.
 - Compliance with Federal Acts attached as Exhibit E.
 - Wage Determination attached as Exhibit F.
 2. Addenda issued prior to execution of this Agreement.

These documents constitute the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations, or agreements, either written or oral.

- C. **TIME FOR COMPLETION:** The work under this Contract shall be commenced within ten (10) consecutive calendar days after date of issuance of notice to proceed by the SDSTA and shall be completed as described in the SDSTA's written request, excluding punch list items. As to each Contractor proposal, this completion date shall be referred to herein as the “Contract Time.”
- D. This Contract shall terminate as of Date, unless otherwise terminated according to the early termination provisions of this Contract.

II. SDSTA REPRESENTATIVE

The SDSTA shall from time-to-time designate in writing an SDSTA Representative. The SDSTA Representative shall be responsible for providing SDSTA-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations pursuant to this Agreement. The SDSTA Representative shall also provide Contractor with prompt notice if it observes any failure on the part of the Contractor to fulfill its contractual obligations, including any

errors, omissions or defects in the performance of the work provided for in this Agreement. Unless changed in writing by the SDSTA, the SDSTA Representative is **Name (Email)**.

III. THE RESPONSIBILITIES OF THE SDSTA

- A. For the performance of the work specified in the Contract Documents, SDSTA will pay Contractor and Contractor will accept as full compensation a sum not to exceed the amount of Contractor's proposal amount for each request for work. Nothing in this Agreement shall require the SDSTA to accept any proposal made by Contractor. In no event may the total amount paid to Contractor during the term of this Contract exceed **WRITTEN AMOUNT DOLLARS (\$XX,XXX.XX)**.
- B. Unit Prices, if any, are as follows: ***Unit prices are set forth in Exhibit D.***

Where the quantities originally contemplated are so changed that application of the agreed unit price to the quantity of work performed is shown to create a hardship to the SDSTA or the Contractor, there shall be an equitable adjustment of the Contract to prevent such hardship.

IV. CHANGE ORDERS

- A. A Change Order is a written order to the Contractor signed by the SDSTA, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates Contractor's agreement therewith, including the adjustment in the Contract Sum or the Contract Time.
- B. The SDSTA, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.
- C. The cost or credit to the SDSTA resulting from a change in the Work shall be determined in one or more of the following ways:
 - 1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation and acceptance to the SDSTA Representative for such purposes. Such lump sum proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each subcontractor(s) involved in the proposed change, as applicable.
 - 2. By unit prices stated in this Contract or subsequently agreed upon.
- D. If none of the methods set forth in this Article IV, paragraphs C1 and C2 is agreed upon, the Contractor, provided Contractor receives a written order signed by the SDSTA, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the SDSTA on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for Contractor's fee. In such case, Contractor shall keep and present, in such form as the SDSTA may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order.

V. DIFFERING SITE CONDITIONS

- A. Contractor shall promptly, and before the conditions are disturbed, give written notice to the SDSTA and Project Engineer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

- B. The SDSTA shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of changed conditions, the Contract Sum shall be adjusted as provided in Article III, provided that the Work has been ordered in writing by the SDSTA.

VI. DELAYS AND EXTENSIONS OF TIME

- A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the SDSTA, or by any separate contractor employed by the SDSTA, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor, or by fire, unusual delay in transportation, severe and unusual weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond Contractor's control and not occurring due to the fault or neglect of the Contractor, any subcontractor or any other person for whose acts the Contractor is responsible, then the Contract Time shall be extended by Change Order for such reasonable time as the SDSTA shall determine.
- B. Any claim for extension of time shall be made in writing to the SDSTA not more than ten (10) days after the commencement of the delay; otherwise it shall be deemed waived. In the case of continuing delay, only one claim is necessary.
- C. Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where the Work is to be performed.
- D. Contractor's right to make a claim or claims for an extension of time shall not preclude Contractor's right to make a claim for delay damages arising out of the SDSTA's significant interference, by action or inaction, with the Contractor's Work.

VII. CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

Contractor assumes responsibility for implementing and monitoring all Environment, Health & Safety (EHS) precautions and programs related to the performance of the Work, as more fully set forth in attached Exhibit B, incorporated herein by reference.

VIII. WORK PLAN POLICY

- A. Contractor shall maintain a site work plan at all times. Safety and health shall be the top priority with all work plans.
- B. Contractor's work plan shall be reviewed with the SDSTA's Project Team prior to starting the Work. The Project Team shall include the Safety Liaison, Project Manager, and SDSTA's Representative. Any changes to the work plan shall be reviewed with the Project Team prior to making said change.
- C. A representative of the SDSTA's Project Team shall review the work plan daily on site with Contractor and its agents, employees, subcontractors and subconsultants prior to starting work for the day. The review shall emphasize safety and health as the top priority.

IX. OWNERSHIP, USE OF DOCUMENTS, CONFIDENTIALITY OF DOCUMENTS

- A. Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the SDSTA, its consultants, employees, contractors and agents to the Contractor for the Contractor's performance of its obligations under this agreement are the property of the SDSTA. They are to be used only with respect to this Project and are not to be used for any other project. The Contractor may not disseminate these materials to any person or entity nor may the Contractor use these materials for purposes other than work for the SDSTA, without the express written approval of the SDSTA. The SDSTA shall not unreasonably withhold such approval for dissemination of these materials as necessary to subcontractors and suppliers.

- B. All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by Contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors in connection with Contractor's performance under this Contract are confidential and the Contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors shall not disclose this information to any person, individual, or entity without the express written permission of the SDSTA.
- C. All documents covered by this article shall be delivered to the SDSTA's Representative at the completion of the Work. The Contractor may not retain any such documents for its own use without the express written permission of the SDSTA and any documents that are retained, with or without SDSTA permission, shall be subject to all of the requirements of this Article.
- D. Contractor shall include the requirements of this article in any contract it enters into with any consultants, subcontractors, suppliers, persons, individuals, or entities for the performance of any of the Contractor's obligations under this Contract.

X. PAYMENTS AND INVOICING

- A. Progress Payments: Subject to the provisions of applicable law, the SDSTA shall make progress payments on a monthly basis for work accomplished in accordance with this Contract.
- B. Final Payment: Subject to the provisions of applicable law, final payment less amounts withheld to cover the cost of nonconforming work, shall be made by the SDSTA within thirty (30) days after the completion and acceptance of the Work by the SDSTA.
- C. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance, the SDSTA's Project Representative or its authorized representative or both shall make such inspection with representatives of the Contractor and the SDSTA, and when it is found that the work is acceptable under the Contract and the Contract is fully performed as evidenced by inspection, the Project Representative shall promptly approve the voucher for payment.
- D. Contractor shall submit evidence satisfactory to the Project Representative that all claims of unpaid payrolls, material bills and other indebtedness connected with the work have been satisfied, prior to approval of the final payment.
- E. Reimbursement for pre-approved travel expenses, if any, will not exceed Federal Travel Regulations (FTR) standard rates for the applicable travel location. Lodging expenses will be reimbursed at FTR rates or the actual lodging cost, whichever is less; airfare shall be reimbursed at the actual cost of a coach class ticket. No additional burdens or overheads will be applied to travel expense reimbursements.
- F. **Invoicing:** Invoices or Payment Request Forms are to be addressed to the South Dakota Science and Technology Authority, 630 East Summit Street, Lead, SD, 57754, and may be submitted by email to: AP@sanfordlab.org. If possible, invoices are to be submitted to the SDSTA on the **3rd day** of the month for work performed in the previous month. Invoices received after the 3rd day of the month will be considered to have been received the following month.

XI. INDEPENDENT CONTRACTOR

Contractor agrees that in the performance of this Contract, it and its agents, employees and consultants are acting as independent contractors and not as employees, agents or officers of the SDSTA. As such, Contractor agrees not to use SDSTA equipment, supplies, and facilities unless otherwise agreed to.

XII. INDEMNITY

Contractor agrees to hold harmless and indemnify the SDSTA, the State of South Dakota, and their officers and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of any officer, agent, subconsultant or employee of Contractor, but only to the extent of such negligence, misconduct, error or omission. This section does not require the Contractor to indemnify the SDSTA or State of South Dakota, or their officers, agents or employees from claims or liability to the extent such claims or liability arise from the acts or omissions of the SDSTA, the State of South Dakota or their officers, agents or employees.

XIII. INSURANCE

- A. During the term of this Agreement, Contractor shall maintain in effect at all times, and provide proof of such coverage to the SDSTA, insurance as described on the attached Exhibit "A," which is incorporated herein by this reference. Contractor acknowledges that the South Dakota Science and Technology Authority, its officers, agents, employees and representatives are parties to this Contract and are therefore covered under Contractor's Blanket Endorsements.
- B. Prior to the commencement of Work, Contractor shall submit certificates of insurance policies to the Project Representative and the SDSTA for review and approval.
- C. By executing this Agreement, Contractor authorizes the SDSTA to make direct inquiry of Contractor's insurer or insurance agent concerning the status of the insurance required by this Agreement.

XIV. AMENDMENT PROVISION

This Contract may only be amended with written consent of both parties or as otherwise provided in this Contract.

XV. TERMINATION FOR CONVENIENCE

- A. The performance of this Contract depends upon the continued availability of appropriated funds and expenditure authority from state and federal sources. The SDSTA reserves the right to terminate this Contract in the event of a failure to obtain appropriated funds or grant expenditure authority. In this event, termination shall be made by written notice to Contractor. Termination for this reason is not a default by the SDSTA nor does it give rise to a claim against the SDSTA. In the event of termination of this Contract because of the unavailability of future funding, the SDSTA will make every effort to provide as much notice as possible to the Contractor. The SDSTA will be responsible for all work it authorizes the Contractor to perform, up to the date of Notice of Cancellation, and will cover all work in progress. In turn, the SDSTA would require the Contractor to make reasonable efforts to limit the SDSTA's liability for the work in progress.
- B. The SDSTA may terminate this Contract at any time without cause, in whole or in part, upon giving Contractor notice of such termination. Upon such termination, Contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as the SDSTA elects not to purchase or to assume. Contractor shall receive as full compensation for termination and assignment the following:
 - 1. All amounts then otherwise due under the terms of this Contract,
 - 2. Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
 - 3. Reasonable compensation for the actual cost of demobilization incurred by Contractor as a direct result of such termination. Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, the SDSTA shall have no further obligations to Contractor of any nature.

XVI. TERMINATION FOR DEFAULT

If Contractor is in default under the Contract Documents, the SDSTA may, without prejudice to any other right or remedy and upon written notice to the Contractor, terminate the Contract.

XVII. DISPUTES

- A. Governing Law: The Contract shall be governed by South Dakota law.
- B. Claims for Damages: Should either party to the Contract suffer injury or damage because of any act or omission of the other party or of any of the other party's employees, agents or others for whose acts the other party is legally liable, claim shall be made in writing to such other party within 14 days after the first observance of such injury or damage.
- C. All claims, counterclaims, disputes or other matters in question between the SDSTA and the Contractor arising out of, or relating to this Contract, or the breach thereof, will be decided in the state courts of South Dakota. Contractor irrevocably and unconditionally agrees to the exclusive jurisdiction of said courts and waives any objection thereto based on the doctrine of forum nonconveniens.
- D. Contractor shall carry on the Work and maintain its progress during any dispute or litigation proceedings, and the SDSTA shall continue to make payments to the Contractor to the extent required by the Contract Documents and South Dakota law.

XVIII. NOTICE:

All notices, demands and other communications required by the Contract Documents shall be in writing and shall be deemed to have been duly given if emailed, personally delivered or mailed first class, postage prepaid:

- **If to Contractor:**

Name
Company
Street or PO Address
City, State Zip Code
Email address

- **If to SDSTA:**

Mike Headley
Executive Director
630 East Summit Street
Lead, SD 57754
MHeadley@sanfordlab.org

Timothy M. Engel
Counsel for the SDSTA
503 S. Pierre Street, P.O. Box 160
Pierre, SD 57501

Either party may change the addresses set forth for notice herein upon written notice thereof to the other.

XIX. MISCELLANEOUS

- A. Documents, information and data provided to the SDSTA pursuant to the terms of this Agreement may be subject to examination and review by representatives of the Homestake Mining Company of California pursuant to the terms of the Property Donation Agreement or by representatives of federal, state or local governmental entities, including, but not limited to, the South Dakota Department of Legislative Audit. Anything elsewhere in this Agreement to the contrary notwithstanding, any such documents, information or data may become public records open to public inspection.
- B. The terms of this Agreement shall be construed and governed under the laws of the State of South Dakota. Any lawsuit arising out of or pertaining to the Agreement shall be commenced in the state courts of South Dakota. The Contractor shall not engage the services of any subcontractors without the prior express, written

consent of the SDSTA. Time is of the essence in the performance of the covenants, terms and conditions of the Agreement. This Agreement constitutes the entire agreement of the parties concerning its subject matter, and supersedes any prior discussions, representations or agreements, wither oral or written. The terms of this Agreement may only be amended by a written document, executed with the same formalities as this Agreement.

- C. Any agreement entered into by the Contactor with any designer, consultant, subconsultant, contractor, subcontractor or other person to perform work in connection with this Agreement shall include the provisions and requirements of Articles III, VII, VIII, IX, XI, XII, XIII, XIX, XX, XXI, and XXII of this Agreement; provided, however, that the amount of general liability insurance required of the designer, consultant, subconsultant, contractor, subcontractor or other person shall be specified by the SDSTA in writing.
- D. Debarment or Suspension: By signing this Contract, the Contractor certifies to the best of its knowledge and belief that it and all persons associated with the Contract, including persons or corporations who have critical influence on or control over the Contract, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.
- E. Service Contract Act Requirements: In accordance with the clause of the General Provisions entitled Service Contract Act of 1965, As Amended (FAR 52.222-41), the Contractor shall pay its service employees, as defined, and ensure that service employees of lower-tier subcontractors are paid, not less than the minimum monetary wages, and shall furnish to them the fringe benefits, specified in the U.S. Department of Labor Wage Determination of this Contract, attached hereto as Exhibit H and incorporated by reference.
- F. Contractor agrees to use the E-Verify System (www.uscis.gov/i-9-central/about-form-i-9/e-verify-and-form-i-9) to verify the employment eligibility of all employees assigned to this Contract and all new hires working in the United States, and to provide E-Verify documentation to the SDSTA within ten (10) days of execution of this Contract. If Contractor is a sole proprietorship with no employees, E-Verify is not required. Contractor further agrees to maintain an active registration, during the term of the Contract, with the System for Award Management (www.sam.gov).

XX. REPORTING

Contractor agrees to report to the SDSTA any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Contractor, the SDSTA or the SDSTA's officers, agents or employees to liability. Contractor shall report any such event to the SDSTA immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the SDSTA and to make any other report provided for by Contractor's duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications.) Reporting to the SDSTA under this Article shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

XXI. CONFLICTS OF INTEREST

Contractor agrees to avoid conflicts of interest, and to provide the SDSTA and the Project Representative with prompt written notification of any circumstances which may give rise to actual or apparent conflict of interest. The existence of an unresolved conflict of interest shall constitute cause to terminate this Agreement.

- A. Indemnification of Homestake Indemnified Parties: Contractor, for itself and its officers, directors, employees, agents, representatives and assigns, will and does hereby release, discharge and agree not to sue the Homestake Indemnified Parties with respect to any damage or injury to any person (including natural persons, corporations, limited liability companies and other entities) or property caused in whole or in part by the Contractor or its officers, directors, employees, agents, representatives, sub-contractors and subsuppliers. For

the purposes of this Agreement, the term “Homestake Indemnified Parties” means Barrick, Homestake and the Affiliates of Barrick and Homestake, and each of its and their Representatives.

XXII. COMPLIANCE WITH FEDERAL REGULATIONS

Contractor agrees that the FAR and DEAR clauses outlined in Exhibit E are hereby incorporated by reference as part of the terms and conditions of this Agreement.

IN WITNESS HERETO, the parties signify their agreement by signatures affixed below on the day and year above first written.

COMPANY

**SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY**

By: _____
Name _____ Date _____
Title _____

Mike Headley _____ Date _____
Executive Director

EXHIBIT A

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY INSURANCE REQUIREMENTS

A. Minimum Insurance

Prior to the commencement of work, the Contractor will procure and maintain the following insurance:

1. Commercial general liability insurance with limits not less than \$1 million per occurrence. Such insurance shall name as additional insureds the South Dakota Science and Technology Authority, its officers, agents, employees and representatives the Fermi Research Alliance, LLC, the University of Chicago, Universities Research Association, Inc., its officers, agents, employees and representatives; and the United States of America.
2. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned and hired automobiles.
3. Errors & omissions liability coverage with limits not less than \$1 million per claim (where applicable).
4. Workers compensation insurance as required by South Dakota law.

B. Special Provisions Applicable to All Coverages

1. The Contractor or Project Sponsor must provide the South Dakota Science and Technology Authority 30 days' notice of cancellation/material change, reserving the right to obtain replacement coverage if Contractor does not and deducting the cost from the contract total.
2. Self-insured retentions and/or deductibles greater than \$50,000.00 must be declared and approved by the Authority.

C. Evidence of Insurance

Prior to commencement of work, the Contractor or Project Sponsor shall furnish the South Dakota Science and Technology Authority with certificates evidencing compliance with the insurance requirements above. The Contractor or Project Sponsor must agree to provide complete, certified copies of all required insurance policies if requested by the Authority.

D. Acceptability of Insurers

Insurance shall be placed with insurers acceptable to the South Dakota Science and Technology Authority.

E. Subcontractors

Contractor shall require Subcontractors to provide insurance that complies with the requirements stated herein.

EXHIBIT B

ENVIRONMENT HEALTH AND SAFETY REQUIREMENTS CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

1. Contractor recognizes the importance of performing the Work in a safe and responsible manner so as to prevent damage, injury, or loss to individuals, the environment, and the Work itself, including materials and equipment incorporated into the Work or stored on-site or off-site. Contractor assumes responsibility for implementing and monitoring all Environment, Safety and Health (ESH) precautions and programs related to the performance of the Work.
2. Contractor and Subcontractors shall comply with all legal and Owner-specific reporting requirements relating to ESH set forth in the Contract Documents. Contractor will immediately report orally, and in writing within one (1) days, any ESH related injury, loss, damage, or accident arising from the Work to Owner's Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work. Contractor and its Subcontractors will immediately report to the Owner's Representative all non-incidental spills, and all other significant impacts to the environment (soil, water, air) in performance of the Work. Contractor will also immediately notify the Owner of any failure to comply with state and federal environmental laws, rules, and regulations.
3. Contractor's responsibility for ESH under this Article is not intended in any way to relieve Subcontractors and Sub-subcontractors of their own contractual and legal obligations and responsibilities.

ESH Requirements and Coordination

4. Safety and protection of the environment are of the utmost concern on this Contract. Safety in this context refers to the health and safety of people and the protection of the environment. Nothing contained herein relieves the Contractor from complying with all applicable standards and regulations found in 29 CFR Part 1926 (the OSHA construction standard) 40 CFR Parts 261-265 (solid and hazardous waste management), as applicable. Site specific safety requirements are defined in the "Contractor Safety Manual," located at:
<https://www.sanfordlab.org/ehs/manual/21-contractor-safety-policy>.

MHSA compliance may be acceptable after review.

5. The Contractor will address the safety requirements defined herein and in the Owner's Contractor Safety Policy. Contractor costs associated with the implementation of the requirements will be borne by the Contractor. Safety deficiencies discovered after the award will be remedied at no cost to the Owner and may at the Owner's discretion be deducted from the Contract amount.
6. The Contractor shall have an ESH representative, approved by the Owner, present on the Project at all times when Work is physically being performed. This ESH representative can be a supervisor or crew member. If shift work will be utilized, the Contractor must have an ESH representative for each shift. In the case of shift work, the Contractor will designate one ESH representative as the lead for the project. The training requirements for the second ESH representative are the same as the lead and are as follows:
 - The ESH representative shall have the authority to stop work.
 - The ESH representative is responsible for administering the Contractor's ESH program.
 - In addition to routine daily inspections, the ESH representative will conduct a documented weekly ESH inspection of the work site.
 - The ESH representative will escort the Owner's ESH staff on ESH inspections, conducted by the Owner's ESH staff.
 - The Contractor will supply a weekly ESH report to the Owner, detailing any ESH related items, including OSHA recordable injuries, first aid cases, environmental releases, near misses, and a copy of the weekly ESH inspection.

7. The Contractor shall have on site at all times when Work is being performed at least one individual certified in CPR and First Aid.

8. The Contractor, if performing work underground, must have an individual trained and qualified as a Guide for each area that the contractor will be working. The Guide must be onsite with the workers at all times that workers are underground. The guide training will be coordinate with SDSTA and will consist of twenty-four hours of training and guide walks.

9. The Contractor must have a documented Site-Specific Contractor Environment, Health and Safety Program (CESHP) in place and accepted by the Owner before Work will be authorized to start. This program must be consistent with the requirements in the Owner's Contractor Safety Policy. This plan shall:

- Incorporate the requirements identified in the Contractor Safety Policy.
- Include an Area Hazards Analysis.
- Contain a Job Hazard Analysis (JHA) for each definable work element.

The CESHP will be based on the hazards inherent to the Means and Methods adopted by the Contractor and its associated work environment. The scope of work will dictate the required program elements for this Contract. The following are examples of program elements that the Contractor may include in its CESHP:

- Electrical Safety
- Fall Protection
- Personal Protective Equipment (PPE)
- Control of Hazardous Energy (Lock Out/ Tag Out)
- Confined Space
- Hotwork (Grinding and Burning)
- Hoisting and Rigging
- Hearing Conservation (Includes Industrial Hygiene Monitoring and Medical Baselines, if appropriate)
- Respiratory Protection (Includes Industrial Hygiene Monitoring and Medical Baselines, if appropriate)
- Emergency Response
- Fire Protection and Prevention (Contractor must provide its own extinguishers)
- Blood Borne Pathogens
- Hazardous Communications
- Machine Safeguarding
- Powered Industrial Trucks
- Industrial Hygiene
- Material Handling
- Spill Prevention, Control, and Countermeasures (Contractor to provide all associated equipment)
- Storm Water Management
- Solid and Hazardous Waste Management
- Air Pollution Control
- Scaffolding

If the Contractor chooses to adopt one or more specific elements of the Owner's ESH program, it must adopt that element in its entirety.

10. The Contractor is expected to follow a work planning process that is acceptable to the Owner. The work planning process must be conducted and documented prior to the start of Work. The work planning process follows these steps and is documented in the form of a Job Hazards Analysis (JHA):

- Define the scope of the work.
- Analyze hazards in a step by step fashion.
- Develop and implement hazard controls and regulatory compliance.
- Perform the work and monitor the effectiveness of the hazard controls.

- Provide feedback to improve the process (e.g. routine workplace inspections, auditing compliance during work performance, job briefing postings, lessons learned, etc).

A JHA, acceptable to the Owner, must be completed and reviewed with the individual expected to perform the Work prior to Work starting on a specified task. The Contractor ESH representative is expected to review all JHAs. Copies of JHAs must be present at the location where Work is being performed and accessible to the individuals performing the Work and to Owner representatives.

11. The Contractor will conduct a crew work planning meeting (tailgate/toolbox talk), including, when necessary, Subcontractor employees, prior to the beginning of each shift. This talk will include the plan of work for the day, a review of hazards and potential regulatory issues, and the review of applicable JHAs.

12. The Contractor is responsible for identifying the need for Qualified and/or Competent Persons for specific tasks as defined in 29 CFR 1926.

13. Contractor shall provide all common Personal Protective Equipment (PPE) required for the Work (hard hats, safety toe boots, safety glasses) unless otherwise stated in the Scope of Work. During the bid process, bidder shall include as a separate line item any PPE unique to the scope. Contractor included in its bid a separate line item for any PPE unique to the scope. Owner shall notify the Contractor in the Notice to Proceed of its intent to reduce the contract value if Owner elects to provide this PPE. Unique PPE required for any *underground work* shall include:

- W65 Self Rescuers (must be maintained according to MSHA requirements) (always required when working underground)
- Gas Tester(s) (M40M or equivalent) (will be required for all underground work)
- Cap lamps (may be required depending on location of underground work)

14. The Contractor is responsible for screening all Subcontractors with respect to safety and to adopt a safety selection process consistent with requirements defined herein. In addition, Contractor is responsible for flowing down all ESH requirements of the Contract to its Subcontractors, including monitoring and enforcing compliance.

15. The Contractor is responsible for assuring that all Contractor employee safety training is completed in compliance with Owner guidelines, policies and 29 CFR 1926. The following training is required for all Contractor personnel before they start work:

- Documented compliance with OSHA 1910 and 1926 along with training requirements as applicable is required. Note that current MSHA training certification is also acceptable.
- Site Specific ESH Orientation and Training (plan for a 1-2hour on-site training course conducted by Owner's representatives).
- Any other training requirements identified by the Contractor in its CESHP or by the Owner and communicated to the Contractor, during the bid process and Site Specific ESH Program review.

16. If the Owner perceives the Contractor has created or is exposed to an imminent danger or a non-compliance situation, the Owner will suspend work until safe conditions are re-established. Such work stoppages will be at the expense of the Contractor and will not add time to the completion date of the Contract.

17. In the event of an incident, Contractor will conduct an incident investigation in accordance with the Owner's policies. The investigation will include preparing a written report summarizing the results of the investigation, corrective actions taken to prevent a reoccurrence, and any lessons learned. The Owner may at its discretion participate in and facilitate the incident investigation. Time and expense incurred by Contractor performing an incident investigation will be at the Contractor's expense.

18. The Contractor shall regularly inspect, test, and calibrate as necessary all equipment, machinery, tools or other items furnished by the Owner that are employed in Contractor's Work. Contractor shall take reasonable precautions to avoid damage to facility structures and utilities. If apparent defects are found in Owner-provided materials, Contractor shall promptly notify Owner of such defect(s) in writing. If Contractor fails to make such

examination or fails to report an apparent defect in such item or items, Contractor shall not be entitled to any compensation for downtime or delays or schedule extensions associated with repair or replacement of the defective item or items.

19. The Contractor shall manage all waste in performance of the Work in compliance with Owner's Policies and Procedures and state and federal law. Further, the Contractor shall minimize the generation of all wastes and hazardous substances. All disposal and clean-up cost of spills of hazardous substances and non-hazardous debris/waste generated by the Contractor in the performance of the Work will be at the expense of the Contractor.

20. Flammables (defined in 30 CFR Part 52, Subpart A) are not allowed underground. Special consideration may be negotiated with the Owner if Work cannot be completed without flammable materials. This special consideration **must be** **would have been** negotiated during the bidding process. Flammables used on the surface are to be stored in engineered flammable cabinets or in containers with a minimum 1-hour fire resistance.

21. All chemicals to be used at the Owner's facility must be approved by the Owner and Safety Data Sheets (SDS) must be maintained by the Contractor, onsite.

22. Tier 4 engines are required on the Owner's site for underground use. Lower Tier equipment may be allowed on site but only with Owner's permission. All diesel equipment must be approved by the Owner prior to usage. An equipment list with associated Tier designations and fuel types **is to be** **was** provided to the Owner in the bid package.

23. Smoking or the use of tobacco products is not allowed within the boundaries of the Owner's facility.

24. Contractor acknowledges that periodic drills and exercises are required by Owner to validate the adequacy and effectiveness of Owner's Emergency Response Plan. Contractor also recognizes that such drills and exercises enhance its employees' understanding of Owner's Emergency Response Plan. Contractor agrees to participate in quarterly drills, which may or may not be scheduled in advance, during the term of this Contract. It is understood that Contractor will not be entitled to any additional compensation for participating in these drills or exercises.

25. Contractor agrees to assess whether Contractor's employees have the physical, mental, and emotional capacity to perform assigned tasks competently, and in a manner that does not unreasonably threaten safety, health, or property, including participation in emergency procedures applicable to Contractor's work location.

26. Owner reserves the right to restrict or deny access of any Contractor employee to the work location.

27. Contractor shall report the hours worked on site by Contractor's employees on a monthly basis to ESH Safety Coordinator Michelle Andresen (mandresen@sanfordlab.org) and to the SDSTA Representative named in the Contract. Hours should be emailed to both Ms. Andresen and the SDSTA Representative no later than the 3rd day of the month for hours worked the previous month.

EXHIBIT C
SCOPE OF WORK

EXHIBIT D
CONTRACTOR'S RATE SHEET

EXHIBIT E
COMPLIANCE WITH FEDERAL REGULATIONS

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
SUBCONTRACT GENERAL SERVICES**

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1. DEFINITIONS

1.1 As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term “Government” shall mean the Government of the United States acting through the United States Department of Energy or its successor.
- (b) The term “Department” shall mean the United States Department of Energy or any duly authorized representative thereof.
- (c) The term “SDSTA” shall mean South Dakota Science Technology Authority LLC, and includes the any duly authorized representatives thereof.
- (d) Except as otherwise provided in this Subcontract, the term “sub-subcontracts” includes purchase orders under this Subcontract.
- (e) “Manager” shall mean the person in charge of business services for SDSTA or his written designee.

1.2 As used in any FL that is a part of this Subcontract, the term “outlying areas” shall mean-

- (a) The Commonwealths of Puerto Rico and the Northern Mariana Islands;
- (b) The Territories of American Samoa, Guam, and the U.S. Virgin Islands; and
- (c) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

1.3 When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures. When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

2. COVENANT AGAINST CONTINGENT FEES

2.1 (a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this Subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty SDSTA shall have the right to annul this Subcontract without liability or to deduct from the Subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(c) “Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

- (d) “Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.
- (e) “Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter. For purposes of this clause, the term “Government” includes “SDSTA.”

3. SUB-SUBCONTRACTS FOR COMMERCIAL ITEMS

3.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) Commercial item has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

(b) Sub-subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or sub-subcontractor at any tier.

3.2 To the maximum extent practicable, the Subcontractor shall incorporate, and require its sub- subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

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

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2015) (41 U.S.C. 3509), if the Subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

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

(iii) 52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), if the Subcontractor offers further Subcontracting opportunities. If the Subcontract (except Subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the Subcontractor must include 52.219- 8 in lower tier Subcontracts that offer Subcontracting opportunities.

(iv) Prohibition of Segregated Facilities (APR 2015).

(v) 52.222-26, Equal Opportunity (APR 2015) (E.O. 11246).

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

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

(viii) 52.222-37, Employment Reports on Veterans (JUL 2014) (38 U.S.C. 4112).

(ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(x) (A) 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xi) Minimum Wages under Executive Order 13658(DEC 2015).

(xii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (JUL2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xiii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

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

(b) While not required, the Subcontractor may flow down to Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

3.4 The Subcontractor shall include the terms of this clause, including this paragraph 3.4, in Subcontracts awarded under this contract.

4. CONVICT LABOR

4.1 Except as provided in paragraph 4.2 of this clause, the Subcontractor shall not employ in the performance of this Subcontract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

4.2 The Subcontractor is not prohibited from employing persons-

- (a) On parole or probation to work at paid employment during the term of their sentence;
- (b) Who have been pardoned or who have served their terms; or
- (c) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-
 - (i) The worker is paid or is in an approved work training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

5. [RESERVED]

6. EQUAL OPPORTUNITY FOR VETERANS

6.1 DEFINITIONS. AS USED IN THIS CLAUSE—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.

6.2 EQUAL OPPORTUNITY CLAUSE. The Subcontractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Subcontractor to employ and advance in employment qualified protected veterans.

6.3 SUB-SUBCONTRACTS. The Subcontractor shall insert the terms of this clause in sub-subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

7. NOTICE OF LABOR DISPUTES

7.1 If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice, including all relevant information, to SDSTA.

7.2 The Subcontractor agrees to insert the substance of this clause, including this paragraph 7.2, in any sub-Subcontract to which a labor dispute may delay the timely performance of this Subcontract; except that each sub-Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the sub-subcontractor shall immediately notify the next higher tier sub-subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

8. UTILIZATION OF SMALL BUSINESS CONCERNS

DEFINITIONS. AS USED IN THIS SUBCONTRACT—

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

(b) “Service-disabled veteran-owned small business concern”—

(i) Means a small business concern—

(A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

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

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

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

(B) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.102(c)(2); and

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

(e) “Veteran-owned small business concern” means a small business concern—

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

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

(f) “Women-owned small business concern” means a small business concern—

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

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

8.2 It is the policy of the United States, the Department of Energy, and SDSTA that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing Subcontracts let by SDSTA, including Subcontracts and sub-subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their Subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

8.3 The Subcontractor hereby agrees to carry out this policy in the awarding of sub-subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the Department as may be necessary to determine the extent of the Subcontractor’s compliance with this clause.

8.4 (a) Subcontractors acting in good faith may rely on written representations by their sub-subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a

women-owned small business concern.

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

- (i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;
- (ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
- (iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

9. ASSIGNMENT

Neither this Subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by SDSTA. SDSTA may assign the whole or any part of

this Subcontract to the Government or its designee or to a successor contractor, and in such event this Subcontract shall continue in full force and effect.

10. AUDIT AND RECORDS

10.1 This clause applies if this Subcontract exceeds \$100,000.

10.2 As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

10.3 EXAMINATION OF COSTS.

If this is a cost reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable Subcontract, or any combination of these, the Subcontractor shall maintain and SDSTA, or an authorized representative of SDSTA, shall have the right to examine and audit all records and other evidence incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor’s plants, or parts of them, engaged in performing the Subcontract.

10.4 COST OR PRICING DATA.

If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this Subcontract, SDSTA, or an authorized representative of SDSTA, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor’s records, including computations and projections, related to –

- (a) The proposal for the Subcontract, sub-subcontract, or modification;
- (b) The discussions conducted on the proposal(s), including those related to negotiating;
- (c) Pricing of the Subcontract, sub-subcontract, or modification; or
- (d) Performance of the Subcontract, sub-subcontract or modification.

10.5 COMPTROLLER GENERAL –

(a) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor’s directly pertinent records involving transactions related to this Subcontract or a sub-subcontract hereunder.

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

10.6 REPORTS.

If the Subcontractor is required to furnish cost, funding, or performance reports, SDSTA or an authorized representative of SDSTA shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- (a) The effectiveness of the Subcontractor’s policies and procedures to produce data compatible with the objective of these reports and
- (b) The data reported.

10.7 AVAILABILITY.

The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs 10.2 through 10.6 of this clause, for examination, audit, or reproduction, until 3 years after final payment under this Subcontract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this Subcontract. In addition –

- (a) If this Subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
- (b) Records relating to litigation or the settlement of claims arising under or relating to this Subcontract shall be made available until such litigation or claims are finally resolved.

10.8 The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph 10.8, in all under this Subcontract that exceed \$100,000, and –

- (a) That are cost-reimbursement, incentive, time-and materials, labor-hour, or price-determinable type or any combination of these;
 - (b) For which cost or pricing data are required; or
 - (c) That require the sub-subcontractor to furnish reports as discussed in paragraph 10.6 of this clause.
- The clause may be altered only as necessary to identify properly the contracting parties.

10.9. [RESERVED]

11. EQUAL OPPORTUNITY

11.1 DEFINITIONS. AS USED IN THIS CLAUSE—

- (a) Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
- (b) Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
- (c) “United States,” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, America Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

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

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

11.4 During performance of this Subcontract, the Subcontractor agrees as follows:

- (a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (b) The Subcontractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.

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

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

(e) The Subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, the notice, to be provided by SDSTA, advising the labor union or workers representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(g) The Subcontractor shall furnish to SDSTA all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of Subcontract award, the Subcontractor shall, within 30 days after contract award, apply

to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

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

(i) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government Subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

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

(k) The Subcontractor shall take such action with respect to any sub-subcontract or purchase order as SDSTA, may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a sub-subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.

11.4 Notwithstanding any other clause in this Subcontract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

12. APPLICABLE LAW

To the extent that Federal law does not exist and State law could become applicable to this Subcontract, the Law of Illinois shall apply.

13. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

(a) This Subcontractor and sub-subcontractor shall abide by the requirements of 41 CFR 60-741.5(a) as of March 24, 2014. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and Subcontractors to employ and advance in employment qualified individuals with disabilities.

(b) SUBCONTRACTS. The Subcontractor shall include the terms of this clause in every sub-subcontract

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

14. MODIFICATION PROPOSALS—PRICE BREAKDOWN

14.1 The Subcontractor, in connection with any proposal he makes for a Subcontract modification, shall furnish a price breakdown, itemized as required by SDSTA. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, sub-subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for sub-subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The justification shall be furnished by the date specified by SDSTA.

14.2 When costs are a factor in any determination of a Subcontract price adjustment under any clause of this Subcontract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31.2 of the Federal Acquisition Regulation (48CFR 31.2) and Subpart 931.2 of the Department's Acquisition Regulation in effect on the date of this Subcontract.

15. RESTRICTION ON CERTAIN FOREIGN PURCHASES

15.1 Unless advance authorization has been obtained by SDSTA from the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

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

15.3 The Subcontractor shall insert this clause, including this paragraph 15.3, in all lower tier Subcontracts.

16. EMPLOYMENT REPORTS ON VETERANS

16.1 Definitions. As used in this clause-

(a) "Armed Forces service medal veteran," "disabled veteran," "active duty wartime or campaign badge veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

16.2 Unless the Subcontractor is a State or local government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on—

(a) The total number of employees in the Subcontractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(b) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

(c) The maximum number and minimum number of employees of the Subcontractor or Subcontractor at each hiring location during the period covered by the report.

16.3 The Subcontractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

16.4 The Subcontractor shall submit VETS-100A Reports no later than September 30 of each year.

16.5 The employment activity report required by paragraphs 16.2 (b) and 16.2 (c) of this clause shall

reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Subcontractors may select an ending date—

- (i) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
- (ii) As of December 31, if the Subcontractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

16.6 The number of veterans reported must be based on data known to the Subcontractor when completing the VETS-100A. The Subcontractor's knowledge of veterans' status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the Subcontractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

16.7 The Subcontractor shall insert the terms of this clause in Subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

17. [RESERVED]

18. INDEPENDENT CONTRACTOR; NO JOINT EMPLOYMENT

In all respects pertaining to this Subcontract the Subcontractor is, and shall act as an independent Subcontractor and the Subcontractor shall not be or act as the agent, employee or servant of SDSTA or the Government. Without limiting the generality of the foregoing it is understood and agreed:

- (a) That all persons employed by the Subcontractor in the performance of this agreement shall be employees of the Subcontractor and not employees of SDSTA or the Government; nor shall SDSTA or the Government be joint employers of any persons employed by the Subcontractor and
- (b) That the Subcontractor shall not enter into any contract with a third party which purports to obligate or bind SDSTA or the Government.

19. SUBCONTRACTOR CERTIFIED COST OR PRICING DATA AND SUBCONTRACTOR CERTIFIED COST OR PRICING DATA - MODIFICATIONS

19.1 Before awarding any sub-subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any sub-subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), the Subcontractor shall require the sub-subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR [15.408](#), [Table 15-2](#) (to include any information reasonably required to explain the sub-subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1](#) applies.

19.2 The Subcontractor shall require the sub-subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (19.1) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the sub-subcontract or sub-subcontract modification.

19.3 In each sub-subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), when entered into, the Subcontractor shall insert either—

- (a) The substance of this clause, including this paragraph (19.3), if paragraph (19.1) of this clause requires submission of certified cost or pricing data for the sub-subcontract; or
- (b) The substance of the clause at FAR [52.215-13](#), Subcontractor Certified Cost or Pricing Data—Modifications.

19.4 The requirements of paragraphs 19.5 and 19.6 of this clause shall—

- (a) Become operative only for any modification to this Subcontract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#); and
- (b) Be limited to such modifications.

19.5 Before awarding any sub-subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any Subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), the Subcontractor shall require the sub-subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR [15.408](#), [Table 15-2](#) (to include any information reasonably required to explain the sub-subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1](#) applies.

19.6 The Subcontractor shall require the sub-subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph 19.5 of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the sub-subcontract or sub- subcontract modification.

19.7 The Subcontractor shall insert the substance of this clause, including this paragraph 19.7, in each sub- subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR [15.403-4](#) on the date of agreement on price or the date of award, whichever is later.

20. RESTRICTIONS ON SUB-SUBCONTRACTOR SALES TO THE GOVERNMENT

(Applicable only if this Subcontract exceeds the simplified acquisition threshold)

20.1 Except as provided in 20.2 below, the Subcontractor shall not enter into any agreement with an actual or prospective sub-subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such sub-subcontractors directly to the Government of any item or process (including computer software) made or furnished by the sub-subcontractor under this Subcontract or under any follow-on production Subcontract.

20.2 The prohibition in 20.1 above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

20.3 The Subcontractor agrees to incorporate the substance of this clause, including this paragraph 20.3, in all sub- subcontracts that exceed the simplified acquisition threshold.

21. ANTI-KICKBACK PROCEDURES

(Applies to subcontracts over \$150,000.)

21.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a Subcontract relating to a prime contract.

(b) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint- stock company, or individual.

(c) "Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(d) "Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

(e) "Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

(f) "Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(g) "Subcontractor," as used in this clause,

(i) Means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract, or Subcontract entered into in connection with such prime contract, and

(ii) Includes any person who offers to furnish or furnishes general supplies to the prime

Contractor or a higher tier Subcontractor.

(h) "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

21.2 41. U.S.C. chapter 87, Kickbacks, prohibits any person from—

- (a) Providing or attempting to provide or offering to provide any kickback;
- (b) Soliciting, accepting, or attempting to accept any kickback; or
- (c) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime Contractor or higher tier Subcontractor.

21.3 (a) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph 21.2 of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(b) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph 21.2 of this clause.

(c) The Manager may –

(i) Offset the amount of the kickback against any monies owed by SDSTA under this Subcontract and/or

(ii) Direct that the Subcontractor withhold from sums owed the sub-subcontractor under the prime contract, the amount of the kickback. The Manager may order that monies withheld under subdivision 21.3(c)(i) of this clause be paid over to SDSTA unless SDSTA has already offset those monies under subdivision 21.3(c)(ii) of this clause. In either case, the Subcontractor shall notify the Manager when the monies are withheld.

(d) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph 21.3(d), in all sub-subcontracts that exceed \$150,000.

22. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

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

22.1 This Subcontract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

22.2 OVERTIME REQUIREMENTS.

No Subcontractor or sub-subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.

22.3 VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.

The responsible Subcontractor and sub-subcontractor are liable for unpaid wages if they violate the terms in paragraph

22.2 of this clause. In addition, the Subcontractor and sub-subcontractor are liable for liquidated damages payable to the Government. Liquidated damages will be assessed at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).

22.4 WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.

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

22.5 PAYROLLS AND BASIC RECORDS.

(a) The Subcontractor and its sub-subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics working on the Subcontract during the Subcontract and shall make them

available to SDSTA and the Government until 3 years after Subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(b) The Subcontractor and its sub-subcontractors shall allow authorized representatives of SDSTA, DOE or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph 22.5(a) of this clause. The Subcontractor or sub-subcontractor also shall allow authorized representatives of SDSTA, DOE or Department of Labor to interview employees in the workplace during working hours.

22.6 SUB-SUBCONTRACTS.

The Subcontractor shall insert the provisions set forth in paragraphs 22.2 through 22.5 of this clause in sub-subcontracts that may require or involve the employment of laborers and mechanics and require sub-subcontractors to include these provisions in any such lower tier sub-subcontracts. The Subcontractor shall be responsible for compliance by any Sub-subcontractor or lower tier sub-subcontractor with the provisions set forth in paragraphs 22.2 through 22.5 of this clause.

23. PREFERENCE FOR U.S. FLAG AIR CARRIERS

23.1 (a) “International air transportation,” as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

(b) “United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas (see paragraph 1.2).

(c) “U.S. Flag air carrier,” as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

23.2 Section 5 of the International Air Transportation Fare Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and Subcontractors use U.S. flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United

States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S. flag air carrier is available to provide such services.

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

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

STATEMENT OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

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

(State reasons): _____

(End of Statement)

23.5 The Subcontractor shall include the substance of this paragraph, including this subparagraph 23.5, in each sub-subcontract or purchase order under this Subcontract that may involve international air transportation.

24. PROHIBITION OF SEGREGATED FACILITIES

24.1 DEFINITIONS. AS USED IN THIS CLAUSE—

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

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

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

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

24.3 The Subcontractor shall include this clause in every sub-subcontract and purchase order that is subject to includes the Equal Opportunity clause of this Subcontract (see clause 11).

25. PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS

25.1 Except as provided in paragraph 25.5 of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b) requires that Federal departments and agencies shall transport in privately owned U.S. flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are –

- (a) Acquired for a U.S. Government agency account;
- (b) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (c) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (d) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

25.2 The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this Subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph 25.1 above,

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

25.3 (a) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both

- (i) SDSTA and
- (ii) The Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, D.C. 20590. Sub-subcontractor bills of lading shall be submitted through SDSTA.

(b) The Subcontractor shall furnish these bill of lading copies

- (i) Within 20 working days of the date of loading for shipments originating in the United States or
- (ii) Within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

25.4 The Subcontractor shall insert the substance of this clause, including this paragraph 25.4, in all sub-subcontracts or purchase orders under this Subcontract, except those described in paragraph 25.5(d).

25.5 The requirement in paragraph 25.1 does not apply to:

- (a) Cargoes carried in vessels as required or authorized by law or treaty;
- (b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
- (c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
- (d) Sub-subcontracts or purchase orders for the acquisition of commercial items unless -
 - (i) This Subcontract is -
 - (A) A Subcontract or agreement for ocean transportation services; or
 - (B) A construction Subcontract; or
 - (ii) The supplies being transported are -
 - (A) Items the Subcontractor is reselling or distributing to the Government without adding value. (Generally, the Subcontractor does not add value to the items when it Subcontracts items for f.o.b. destination shipment); or
 - (B) Shipped in direct support of U.S. military -
 - (1) Contingency operations;
 - (2) Exercises; or
 - (3) Forces deployed in connection with United Nations or North

Atlantic Treaty Organization humanitarian or peacekeeping operations.

25.6 Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, Phone: 202-366-4610

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

26.1 DEFINITIONS AS USED IN THIS CLAUSE—

- (a) "Commercially available off-the-shelf (COTS) item," as used in this clause--
 - (i) Means any item of supply (including construction material) that is—
 - (A) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
 - (B) Sold in substantial quantities in the commercial marketplace; and
 - (C) Offered to SDSTA, under a Subcontract or sub-subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - (ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

26.2 The Government suspends or debars Subcontractors to protect the interests of the Government and SDSTA. Other than a sub-subcontract for a commercially available off-the-shelf item, the Subcontractor shall not enter into any sub-subcontract in excess of \$35,000 with a Subcontractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

26.3 The Subcontractor shall require each proposed sub-subcontractor whose Subcontract will exceed \$35,000, other than a sub-subcontractor providing a commercially available off-the-shelf item, to disclose to the Subcontractor, in writing, whether as of the time of award of the sub-subcontract, the sub-subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

26.4 A corporate officer or a designee of the Subcontractor shall notify SDSTA, in writing, before entering into a sub-subcontract with a party (other than a sub-subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

- (a) The name of the sub-subcontractor.
- (b) The Subcontractor's knowledge of the reasons for the sub-subcontractor being listed with an exclusion in SAM.
- (c) The compelling reason(s) for doing business with the sub-subcontractor notwithstanding its being listed with an exclusion in SAM.
- (d) The systems and procedures the Subcontractor has established to ensure that it is fully protecting SDSTA's and the Government's interests when dealing with such sub-subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment

26.5 SUB-SUBCONTRACTS.

Unless this is a contract for the acquisition of commercial items, the Subcontractor shall include the requirements of this clause, including this paragraph 26.5 (appropriately modified for the identification of the parties), in each Sub-subcontract that—

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

27. CONTROLLED SUBSTANCES (DRUG-FREE WORK PLACE)

27.1 This clause applies to all work performed at the SDSTA site.

27.2 Employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while on the SDSTA site. A “controlled substance” means a controlled substance identified in Schedules I through V of Section 202 of the Federal Controlled Substances Act (21

U.S.C. 812) and as further defined in Federal Regulation at 21 CFR 1308.11-1308.15.

27.3 POLICY.

(a) SDSTA shall require all Subcontractors subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the Subcontract. Specifically, this clause applies to Subcontracts of \$25,000 or more and which have been determined by SDSTA to involve high risk of danger to life, the environment, public health and safety, or national security; or transportation of hazardous material to or from a DOE site.

(b) SDSTA shall review and approve each Subcontractor's program, and shall periodically monitor each Subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(c) The Subcontractor agrees to include, and require the inclusion of, the requirements of this clause in all Subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

27.4 The Subcontractor shall notify its employees working at SDSTA of this prohibition and of the disciplinary action that will be taken against employees violating the prohibition, and Subcontractor shall enforce this drug-free workplace policy, as well as implement other personnel assistance programs, as appropriate, to help ensure a drug-free workplace at SDSTA. Subcontractor employees shall be required to notify the Subcontractor of any criminal drug

statute conviction for a violation that occurred in the SDSTA workplace within five (5) days of such a conviction and the Subcontractor shall, in turn, notify SDSTA within five (5) days of receiving employee's notice.

28. PRINTING

28.1 To the extent that duplicating or printing services may be required in the performance of this Subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

28.2 The term “Printing” includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this Subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

28.3 Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed or a reduction in the Subcontract price by an amount equal to the cost of the

printing to the Subcontractor.

28.4 In all sub-subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations and subsection 28.2), the Subcontractor shall include a provision substantially the same as this clause.

29. NOTIFICATION OF OWNERSHIP CHANGES

29.1 This clause applies

(a) If certified cost or pricing data was submitted by the Subcontractor in connection with the award of this Subcontract, or (b) If the Subcontractor furnishes certified cost or pricing data under paragraph 19.4 of the clause entitled "Certified Cost or Pricing Data" in connection with a change or other modification to this Subcontract.

29.2 The Subcontractor shall make the following notifications in writing:

(a) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify SDSTA within 30 days.

(b) The Subcontractor shall also notify SDSTA within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

29.3 The Subcontractor shall:

(a) Maintain current, accurate, and complete inventory records of assets and their costs;

(b) Provide SDSTA or designated representative ready access to the records upon request;

(c) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and

(d) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

29.4 The Subcontractor shall include the substance of this clause in all sub-subcontracts under this Subcontract which meet the applicability requirement of FAR 15.408(k).

30. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

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

30.1 DEFINITIONS AS USED IN THIS CLAUSE—

(a) "Agency," as used in this clause, means executive agency as defined in FAR 2.101.

(b) "Covered Federal action," as used in this clause, means any of the following Federal actions:

(i) The awarding of any Federal Subcontract.

(ii) The making of any Federal grant.

(iii) The making of any Federal loan.

(iv) The entering into any cooperative agreement.

(v) The extension, continuation, renewal, amendment, or modification of any Federal

Subcontract, grant, loan, or cooperative agreement.

(c) "Indian tribe" and "tribal organization" as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

(d) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(e) "Local government," as used in this clause, means a unit of government in a State and, if charged, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(f) "Officer or employee of an agency," as used in this clause, included the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

- (ii) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (iii) A special Government employee, as defined in section 202, Title 18, United States Code.
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.
- (g) "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (h) "Reasonable compensation," as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- (i) "Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- (j) "Recipient," as used in this clause, includes the Subcontractor and all sub-subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (k) "Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal Subcontract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such Subcontract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
- (l) "State," as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States (see paragraph 1.2), an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

30.2 PROHIBITIONS.

- (a) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions:
 - (i) The awarding of any Federal Subcontract;
 - (ii) The making of any Federal grant;
 - (iii) The making of any Federal loan;
 - (iv) The entering into of any cooperative agreement; or
 - (v) The modification of any Federal Subcontract, grant, loan, or cooperative agreement.
- (b) The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal Subcontract, grant, loan, or cooperative agreement.
- (c) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - (A) The prohibitions on the use of appropriated funds, in subparagraph 30.2(a) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities nor directly related to a covered Federal action.
 - (B) For purposes of subdivision 30.2(c)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (C) The following agency and legislative liaison activities are permitted at any time where

they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of any unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(E) Only those agency and legislative liaison activities expressly authorized by subdivision 30.2(c)(i)(D) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph 30.2(a) of this clause, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision 30.2(c)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a Subcontract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those professional and technical services expressly authorized by subdivisions 30.2(c)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments

of reasonable compensation made to regularly employed officers or employees of a person.

30.3 DISCLOSURE.

(a) The Subcontractor who requests or receives from SDSTA a Federal Subcontract shall file with SDSTA a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph 30.2(a) of this clause, if paid for with appropriated funds.

(b) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph 30.3(a) of this clause. An event that materially affects the accuracy of the information the report includes-

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(iv) The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person which requests or received any sub-subcontract exceeding \$100,000 under the Federal Subcontract.

(v) All sub-subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by SDSTA. SDSTA shall submit all disclosures to the Department of Energy at the end of the calendar quarter in which the disclosure form is submitted by the sub-subcontractor. Each Subcontractor certification shall be retained in the Subcontract file of the awarding Subcontractor.

30.4 AGREEMENT.

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

30.5 PENALTIES.

(a) Any person who makes an expenditure prohibited under paragraph 30.2 of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph 30.3 of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent SDSTA or the Federal Government from seeking any other remedy that may be applicable.

(b) Subcontractors may rely without liability on the representation made by their sub-subcontractors in the certification and disclosure form.

30.6 COST ALLOWABILITY.

Nothing in this clause makes allowable or reasonable any cost which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

31. [RESERVED]

32. DISPLACED EMPLOYEE HIRING PREFERENCE

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

32.1 DEFINITION— “Eligible employee” means a current or former employee of a contractor or Subcontractor employed at a Department of Energy Defense Nuclear Facility

(a) Whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),

(b) Who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and

(c) Who is qualified for a particular job vacancy with the Department or one of its contractors or Subcontractors with respect to work under a prime contract with the Department at the time the particular position is available.

32.2 Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the Subcontractor agrees that it will provide a preference in

hiring to an eligible employee to the extent practicable for work performed under this Subcontract.

32.3 The requirements of this clause shall be included in sub-subcontracts at any tier (except for sub-subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

33. [RESERVED]

34. [RESERVED]

35. SUBCONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

35.1 DEFINITIONS. AS USED IN THIS CLAUSE—

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

(b) “Full cooperation”—

(i) Means disclosure to the 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 Government auditors’ and investigators’ request for documents and access to employees with information;

(ii) Does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the contract. It does not require

(A) A Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(B) 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

(iii) Does not restrict a Subcontractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(c) “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).

(d) “Subcontract” means any contract entered into by a Subcontractor to furnish supplies or services for performance of a prime contract or a Subcontract.

(e) “Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime Subcontractor or another Subcontractor.

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

35.2 CODE OF BUSINESS ETHICS AND CONDUCT.

(a) Within 30 days after contract award, unless SDSTA establishes a longer time period, the Subcontractor shall—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(b) 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.

(c) The Subcontractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to SDSTA, whenever, in connection with the award, performance, or closeout of this contract or any Subcontract thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or Subcontractor of the Contractor has committed—

(i) 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

(ii) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(d) The 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 the law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Subcontractor. The 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.

(e) If the violation relates to an order against a Government wide acquisition contract, a multi-agency contract, a multiple-award schedule contract 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 contract.

35.3 BUSINESS ETHICS AWARENESS AND COMPLIANCE PROGRAM AND INTERNAL

CONTROL SYSTEM. This paragraph 35.3 does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Subcontractor shall establish the following within 90 days after contract award, unless SDSTA establishes a longer time period:

(a) 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 Subcontractors.

(b) 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 Government contracts; 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 special requirements of 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 SDSTA, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Subcontractor or a sub-subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or 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 Government contract, the Subcontractor may make the disclosure to the agency OIG and SDSTA procurement administrator responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Government-wide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(ii)(F)(5) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

35.4 SUB-SUBCONTRACTS.

(a) The sub-subcontractor shall include the substance of this clause, including this paragraph 35.4, in Subcontracts that have a value in excess of \$5.5 million and a performance period of more than 120 days.

(b) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the Department of Energy Office of the Inspector General, with a copy to the Fermi Site Office Contracting Officer.

36. COMBATING TRAFFICKING IN PERSONS

36.1 DEFINITIONS. AS USED IN THIS CLAUSE—

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

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

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

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

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

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

(b) "Coercion" means—

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

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

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

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

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

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

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

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

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

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

(g) "Involuntary servitude" includes a condition of servitude induced by means of—

(i) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not

enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

- (ii) The abuse or threatened abuse of the legal process.
- (h) “Severe forms of trafficking in persons” means—
 - (i) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
 - (ii) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (i) “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.
- (j) “Sub-subcontract” means any contract entered into by a sub-subcontractor to furnish supplies or services for performance of a Subcontract or a sub-subcontract.
- (k) “Sub-subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a Subcontractor or another Subcontractor.
- (l) “United States” means the 50 States, the District of Columbia, and outlying areas.

36.2 POLICY.

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

- (a) Engage in severe forms of trafficking in persons during the period of performance of the Subcontract;
- (b) Procure commercial sex acts during the period of performance of the Subcontract;
- (c) Use forced labor in the performance of the Subcontract; or
- d) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identify or immigration documents, such as passports or drivers’ licenses, regardless of the issuing authority;
- (e)
 - (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;
 - (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (f) Charge employee(s) recruitment fees;
- (g)
 - (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment—

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

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

(ii) The requirements of paragraphs 36.2(g)(i) of this clause shall not apply to an employee who is—

- (A) Legally permitted to remain in the country of employment and who chooses to do so; or
- (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph 36.2(g)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The Subcontractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the Subcontractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the

exemptions at paragraph 36.2(g)(ii) of this clause apply.

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

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

36.3 SUBCONTRACTOR

REQUIREMENTS. The Subcontractor shall—

(a) Notify its employees and agents of—

(i) SDSTA and the United States Government's policy prohibiting trafficking in persons, described in paragraph 36.2 of this clause; and

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

(b) Take appropriate action, up to and including termination, against employees, agents, or Subcontractors that violate the policy in paragraph 36.2 of this clause.

36.4 NOTIFICATION.

(a) The Subcontractor shall inform SDSTA immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Subcontractor employee, Subcontractor, or sub-subcontractor employee or their agent has engaged in conduct that violates the policy in paragraph 36.2 of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Subcontractor has credible evidence of fraud); and

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

(b) If the allegation may be associated with more than one contract, the Subcontractor shall inform SDSTA of the contract with the highest dollar value.

36.5 REMEDIES.

In addition to other remedies available to SDSTA or the Government, the Subcontractor's failure to comply with the requirements of paragraphs 36.3, 36.4, 36.7, 36.8 or 36.9 of this clause may result in—

(a) Requiring the Subcontractor to remove a Subcontractor employee or employees from the performance of the contract;

(b) Requiring the Subcontractor to terminate a Subcontract;

(c) Suspension of contract payments until the Subcontractor has taken appropriate remedial action;

(d) Loss of award fee, consistent with the award fee plan, for the performance period in which SDSTA or the Government determined Subcontractor non-compliance;

(e) Declining to exercise available options under this Subcontract;

(f) Termination of the Subcontract for default or cause, in accordance with the termination clause of this Subcontract; or

(g) Suspension or debarment.

36.6 MITIGATING AND AGGRAVATING FACTORS.

(a) When determining remedies, SDSTA may consider the following:

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

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

36.7 FULL COOPERATION.

(a) The Subcontractor shall, at a minimum—

(i) Disclose to SDSTA and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to SDSTA and Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any

other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with SDSTA or Government authorities.

(b) The requirement for full cooperation does not foreclose any Subcontractor rights arising in law, the FAR, or the terms of the Subcontract. It does not—

(i) Require the Subcontractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Subcontractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Subcontractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the Subcontract or related to a potential or disclosed violation.

36.8 COMPLIANCE PLAN.

(a) This paragraph 36.8 applies to any portion of the Subcontract that—

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

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

(b) The Subcontractor shall maintain a compliance plan during the performance of the Subcontract that is appropriate—

(i) To the size and complexity of the Subcontract; and

(ii) To the nature and scope of the activities to be performed for SDSTA, including the number of non- United States citizens expected to be employed and the risk that the Subcontract or sub-subcontract will involve services or supplies susceptible to trafficking in persons.

(c) **MINIMUM REQUIREMENTS.** The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform Subcontractor employees about SDSTA and the Government's policy prohibiting trafficking-related activities described in paragraph 36.2 of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Subcontractor or sub-subcontractor intends to provide or arrange housing that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and Subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph 36.2 of this clause) and to monitor, detect, and terminate any agents, sub-subcontracts, or sub-subcontractor employees that have engaged in

such activities.

(d) POSTING.

(i) The Subcontractor shall post the relevant contents of the compliance plan, no later than the initiation of Subcontract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Subcontractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Subcontractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Subcontractor shall provide the compliance plan to SDSTA upon request.

(e) CERTIFICATION. Annually after receiving an award, the Subcontractor shall submit a certification to SDSTA that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph 36.2 of this clause and to monitor, detect, and terminate any agent, Subcontract or Subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Subcontractor's knowledge and belief, neither it nor any of its agents, sub- subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph 36.2 of this clause have been found, the Subcontractor or sub-subcontractor has taken the appropriate remedial and referral actions.

36.9 SUBCONTRACTS.

(a) The Subcontractor shall include the substance of this clause, including this paragraph 36.9, in all sub-subcontracts and in all contracts with agents. The requirements in paragraph 36.8 of this clause apply only to any portion of the sub- subcontract that—

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

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

(b) If any sub-subcontractor is required by this clause to submit a certification, the Subcontractor shall require submission prior to the award of the sub-subcontract and annually thereafter. The certification shall cover the items in paragraph 36.8(e) of this clause.

37. ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS

37.1 DEFINITIONS AS USED IN THIS CLAUSE—

(a) “Energy-efficient product”

(i) Means a product that—

(A) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(B) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(b) The term “product” does not include any energy- consuming product or system designed or procured for combat or combat-related missions (42 U.S.C.8259b).

37.2 The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e. ENERGY STAR ® products or FEMP-designated products) at the time of Subcontract award, for products that are—

(a) Delivered;

(b) Acquired by the Subcontractor for use in performing services at a Federally-controlled facility;

(c) Furnished by the Subcontractor for use by SDSTA or the Government; or

(d) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

37.3 The requirements of paragraph 37.2 apply to the Subcontractor (including any sub-subcontractor) unless—

(a) The energy-consuming product is not listed in the ENERGY STAR ® Program or FEMP; or

(b) Otherwise approved in writing by SDSTA.

37.4 Information about these products is available for—

(a) ENERGY STAR ® at <http://www.energystar.gov/products>; and

- (b) FEMP at http://www.eere.energy.gov/femp/technologies/eep_purchasingspecs.html

38. SUSPECT/COUNTERFEIT PARTS

38.1 Notwithstanding any other provisions of this agreement, the Subcontractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the Laboratory. Subcontractor further warrants that all items used by the Subcontractor during performance of work at Fermi National Accelerator Laboratory include all genuine, original, and new components, or are otherwise suitable and fit for the intended purpose. Subcontractor's warranty extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory.

38.2 Subcontractor shall indemnify Fermi Research Alliance, LLC and the U.S. Department of Energy, their agents and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable and fit for the intended

purpose. This includes but is not limited to materials that are otherwise suitable and fit for the intended purpose. This includes but is not limited to materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

38.3 Types of material, parts, and components known to have been misrepresented include but are not limited to fasteners; hoisting, rigging and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules.

38.4 Because falsification of information or documentation may constitute criminal conduct, Subcontractor acknowledges and agrees that SDSTA may reject and retain such information or items at no cost and identify, segregate, and report such information or activities to cognizant Department of Energy Officials.

39. PERSONALLY IDENTIFIABLE INFORMATION

39.1 GENERAL REQUIREMENTS.

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C.552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

39.2 SPECIFIC REQUIREMENTS.

(a) The Subcontractor agrees to --

(i) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies --

(A) The systems of records; and

(B) The design, development, or operation work that the contractor is to perform;

(ii) Include the Privacy Act notification contained in this contract in every solicitation and resulting Subcontract and in every Subcontract awarded without a solicitation, when the work statement in the proposed Subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(iii) Include this clause, including this subparagraph (iii), in all Subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (i) “Operation of a system of records,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(ii) “Record,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(iii) “System of records on individuals,” as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

39.3 MANDATORY FLOWDOWN.

Subcontractor is responsible for flowing down the requirements of this clause to sub-subcontractors at any tier to the extent necessary to ensure the Subcontractor’s or sub-subcontractor’s compliance with the requirements.

40. EMPLOYMENT ELIGIBILITY VERIFICATION

40.1 DEFINITIONS AS USED IN THIS CLAUSE—

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

(i) Means any item of supply that is—

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

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

(C) Offered to the Contractor, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

(b) “Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at FAR 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(i) Normally performs support work, such as indirect or overhead functions; and

(ii) Does not perform any substantial duties applicable to the contract.

(c) “Subcontract” means any contract, as defined in FAR 2.101, entered into by a Subcontractor to furnish supplies or services for performance of a prime contract or a Subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

(d) “Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another Subcontractor.

(e) “United States,” as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands

40.2 ENROLLMENT AND VERIFICATION REQUIREMENTS.

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

(i) ENROLL.

Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) VERIFY ALL NEW EMPLOYEES.

Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph 40.2(c) of this section); and

(iii) **VERIFY EMPLOYEES ASSIGNED TO THE CONTRACT.**

For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph 40.2(d) of this section).

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

(i) **ALL NEW EMPLOYEES.**

(A) Enrolled 90 calendar days or more. The Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph 40.2(c) of this section); or

(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Subcontractor shall initiate verification of all new hires of the Subcontractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph 40.2(c) of this section); or

(ii) **EMPLOYEES ASSIGNED TO THE CONTRACT.** For each employee assigned to the contract, the Subcontractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph 40.2(d) of this section).

(c) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Subcontractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Subcontractor shall follow the applicable verification requirements at 40.2(a) or 40.2(b), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

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

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

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

(e) The Subcontractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Subcontractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Subcontractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Subcontractor is excused from its obligations under paragraph 40.2 of this clause. If the suspension or debarment official determines not to suspend or debar the Subcontractor, then the Subcontractor must reenroll in E-Verify.

40.3 WEB SITE.

Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

40.4 Individuals previously verified. The Subcontractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(a) Whose employment eligibility was previously verified by the Subcontractor through the E-Verify program;

(b) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(c) Who has undergone a completed background investigation and been issued credentials pursuant to

Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

40.5 SUB-SUBCONTRACTS.

The Subcontractor shall include the requirements of this clause, including this paragraph (40.5) (appropriately modified for identification of the parties), in each sub-subcontract that—

- (a) Is for—
 - (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
 - (ii) Construction;
- (b) Has a value of more than \$3,500; and
- (c) Includes work performed in the United States.

41. INTEGRITY OF UNIT PRICES

41.1 Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

41.2 When requested by the SDSTA, the Offeror/Subcontractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

41.3 The Subcontractor shall insert the substance of this clause, less paragraph 41.2, in all sub-subcontracts for other than: acquisitions at or below the simplified acquisition threshold (\$150,000) in FAR Part 2; construction or architect-engineer services under FAR [Part 36](#); utility services under FAR [Part 41](#); services where supplies are not required; commercial items; and petroleum products.

42. NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

42.1 During the term of this Subcontract, the Subcontractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the Subcontract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(a) Physical posting of the employee notice shall be in conspicuous places in and about the Subcontractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the Subcontract.

(b) If the Subcontractor customarily posts notices to employees electronically, then the Subcontractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Subcontractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in 42.2(c) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

42.2 This required employee notice, printed by the Department of Labor, may be—

- (a) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
- (b) Provided by the Federal contracting agency if requested;
- (c) Downloaded from the Office of Labor-Management Standards website at www.dol.gov/olms/regs/compliance/EO13496.htm; or
- (d) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

42.3 The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

42.4 The Subcontractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

42.5 In the event that the Subcontractor does not comply with the requirements set forth in paragraphs 42.1 through

42.4 of this clause, this Subcontract may be terminated or suspended in whole or in part, and the Subcontractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart [9.4](#). Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

42.6 SUB-SUBCONTRACTS

(a) The Subcontractor shall include the substance of this clause, including this paragraph 42.6, in every sub-subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each sub-subcontractor.

(b) The Subcontractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(c) The Subcontractor shall take such action with respect to any such sub-subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(d) However, if the Subcontractor becomes involved in litigation with a sub-subcontractor, or is threatened with such involvement, as a result of such direction, the Subcontractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

43. SUBCONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING

43.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) “Driving”—

(i) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(ii) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

(b) “Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

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

43.3 The Subcontractor should—

(a) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles, Government-owned vehicles, or SDSTA-owned vehicles; or

(ii) Privately-owned vehicles when on official Government or SDSTA business or when performing any work for or on behalf of the Government or SDSTA.

(b) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

43.4 SUB-SUBCONTRACTS.

The Subcontractor shall insert the substance of this clause, including this paragraph 43.4, in all sub-subcontracts that exceed the micro-purchase threshold.

44. DISPLAY OF HOTLINE POSTER(S)

44.1 DEFINITION— “United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

44.2 Display of fraud hotline poster(s). Except as provided in paragraph (44.3)—

(a) During Subcontract performance in the United States, the Subcontractor shall prominently display in common work areas within business segments performing work under this Subcontract and at Subcontract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph 44.3 of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by SDSTA.

(b) Additionally, if the Subcontractor maintains a company website as a method of providing information to employees, the

Subcontractor shall display an electronic version of the poster(s) at the website.

(c) Any required posters may be obtained as follows:

Poster(s)	Obtain from
Hotline Poster	http://ig.energy.gov/hotline.htm

44.3 If the Subcontractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Subcontractor need not display any agency fraud hotline posters as required in paragraph (44.2) of this clause, other than any required DHS posters.

44.4 Sub-subcontracts. The Subcontractor shall include the substance of this clause, including this paragraph (44.4), in all sub-subcontracts that exceed \$5.5 million except when the Subcontract—

(a) Is for the acquisition of a commercial item; or

(b) Is performed entirely outside the United States.

45. DUTY-FREE ENTRY

45.1 DEFINITION— “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

45.2 Except as otherwise approved by SDSTA, the Subcontractor shall not include in the Subcontract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

45.3 Except as provided in paragraph (45.4) of this clause or elsewhere in this Subcontract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(a) The Subcontractor shall notify SDSTA in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this Subcontract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to SDSTA at least 20 calendar days before the importation. The notice shall identify the—

(i) Foreign supplies;

(ii) Estimated amount of duty; and

(iii) Country of origin.

(b) SDSTA will determine whether any of these supplies should be accorded duty-free entry and will notify the Subcontractor within 10 calendar days after receipt of the Subcontractor’s notification.

(c) Except as otherwise approved by SDSTA, the subcontract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

45.4 The Subcontractor is not required to provide the notification under paragraph (45.3) of this clause for purchases of foreign supplies if—

- (a) The supplies are identical in nature to items purchased by the Subcontractor or any sub-subcontractor in connection with its commercial business; and
- (b) Segregation of these supplies to ensure use only on SDSTA Subcontracts containing duty-free entry provisions is not economical or feasible.

45.5 The Subcontractor shall claim duty-free entry only for supplies to be delivered to the SDSTA under this Subcontract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by SDSTA, diverted to nongovernmental use.

45.6 SDSTA will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Subcontractor in obtaining duty-free entry for these supplies.

45.7 Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to SDSTA in care of the Subcontractor and shall include the—

- (a) Delivery address of the Subcontractor or SDSTA where appropriate;
- (b) SDSTA Subcontract number;
- (c) Identification of carrier;
- (d) Notation “UNITED STATES GOVERNMENT, SDSTA, Duty-free entry to be claimed pursuant to Item No(s)

_____[from *Tariff Schedules*], Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [*cognizant contract administration office*] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;

(e) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(f) Estimated value in United States dollars.

45.8 The Subcontractor shall instruct the foreign supplier to—

- (a) Consign the shipment as specified in paragraph (45.7) of this clause;
- (b) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of SDSTA; and
- (c) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

45.9 The Subcontractor shall provide written notice to SDSTA immediately after notification by the SDSTA that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Subcontractor to the overseas supplier. The notice shall identify the—

- (a) Foreign supplies;
- (b) Country of origin;
- (c) Contract number; and
- (d) Scheduled delivery date(s).

45.10 The Subcontractor shall include the substance of this clause in any sub-subcontract if—

- (a) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
- (b) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.

46. COMPUTER SECURITY

46.1 DEFINITIONS AS USED IN THIS CLAUSE—

(a) Computer means desktop computers, portable computers, computer networks (including the DOE/SDSTA Network and local area networks at or controlled by DOE/SDSTA organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE or SDSTA.

(b) Individual means a DOE, SDSTA, or Subcontractor employee, or any other person who has been granted access to a DOE/SDSTA computer or to information on a DOE/SDSTA computer, and does not include a member of the public who sends an e-mail message to a DOE/SDSTA computer or who obtains information available to the public on DOE/SDSTA Web sites.

46.2 ACCESS TO DOE/SDSTA COMPUTERS.

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

(a) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE/SDSTA computer; and

(b) The individual has consented in writing to permit access by an authorized investigative agency to any DOE/SDSTA computer used during the period of that individual's access to information on a DOE/SDSTA computer, and for a period of three years thereafter.

46.3 NO EXPECTATION OR PRIVACY.

Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE/SDSTA computer shall have any expectation of privacy in the use of that computer.

46.4 WRITTEN RECORDS.

The Subcontractor is responsible for maintaining written records for itself and Subcontractors demonstrating compliance with the provisions of paragraph (45.2) of this section. The Subcontractor agrees to provide access to these records to SDSTA, or its authorized agents, upon request.

46.5 SUB-SUBCONTRACTS.

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

47. SUSTAINABLE ACQUISITION

47.1 The following provisions apply only to first tier Subcontracts exceeding the simplified acquisition threshold that support operation of SDSTA and offer significant Subcontracting opportunities for energy efficient or environmentally sustainable products or services.

47.2 Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, SDSTA is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its employees and Subcontractor service providers. In the performance of work under this contract, the Subcontractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions, and protects the health and well-being of SDSTA employees, Subcontract service providers and visitors using SDSTA.

47.3 Green purchasing or sustainable acquisition has several interacting initiatives. The Subcontractor must comply with initiatives that are current as of the contract award date. SDSTA may require compliance with revised initiatives from time to time. The Subcontractor may request as equitable adjustment to the terms of its contract using the procedures in the FL Changes Clauses. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:

(a) Recycled Content Products are described at <http://epa.gov/cpg>.

(b) Biobased products are described at <http://www.biopreferred.gov/>.

(c) Energy efficient products are at <http://energystar.gov> products for Energy Star products

(d) Energy efficient products are at <http://www.femp.energy.gov/> procurement for FEMP designated products.

(e) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.

(f) Greenhouse gas emission inventories are required, including Scope 3 emissions, which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executiveorders/disposition.html>.

(g) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.

(h) Water efficient plumbing products are at <http://epa.gov/watersense>.

47.4 The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming products, and 52.223-17 Affirmative procurement of EPA Designated items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Subcontractor require provision of any of the above types of products, the Subcontractor must provide the energy efficient and environmentally sustainable type of

product unless that type of product—

- (a) Is not available;
- (b) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by the Department of Energy and found to be acceptable at the silver and gold level;
- (c) Does not meet performance needs; or,
- (d) Cannot be delivered in time to meet a critical need.

47.5 In the performance of this contract, the Subcontractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, <http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the internet at: <http://energy.gov/management/downloads/acquisition-guide-0>

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

47.7 The Subcontractor shall prepare and submit performance reports using prescribed SDSTA formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default (see FAR 52.249-6, Termination (Cost Reimbursement)).

47.8 The Subcontractor will comply with the procedures in paragraphs 47.4 through 47.6 of this clause regarding the collection of all data necessary to generate the reports required under paragraphs 47.4 through 47.6 of this clause, and submit the reports directly to the ES&H Section at SDSTA. The Subcontractor will advise SDSTA if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph 47.4 of this clause apply. The reports may be submitted at the conclusion of the Subcontract term provided that the Subcontract delivery term is not multiyear in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

47.9 There are several programs under which relevant products have been evaluated.

- (a) Recycled Content <http://www.epa.gov/epawaste/consERVE/tools/cpg/products/index.htm>
- (b) Energy Star and FEMP Designated Products at <http://energystar.gov/>
- (c) Water-efficient Products at <http://www.epa.gov/watersense/>
- (d) Biobased products at <http://www.biobased.oce.usda.gov/fb4p/>
- (e) EPEAT registered electronic products at <http://www.epeat.net/>
- (f) Non-Ozone Depleting Substance at <http://www.epa.gov/ozone/snap/index.html>

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

48. PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS

- (a) Upon receipt of accelerated payments from SDSTA the Subcontractor shall make accelerated payments to its small business Subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or Subcontract, after receipt of a proper invoice and all other required documentation from the small business Subcontractor.
- (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
- (c) Include the substance of this clause, including this paragraph (c), in all Subcontracts with small

business concerns, including Subcontracts with small business concerns for the acquisition of commercial items.

49. NONDISPLACEMENT OF QUALIFIED WORKERS

49.1. DEFINITIONS. AS USED IN THIS CLAUSE—

(a) “Service employee”, as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in [29 CFR part 541](#). The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or Subcontractor and such persons.

49.2 The Subcontractor and its sub-subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this Subcontract or the expiration of the Subcontract under which the service employees were hired, a right of first refusal of employment under this Subcontract in positions for which the service employees are qualified.

(a) The Subcontractor and its sub-subcontractors shall determine the number of service employees necessary for efficient performance of this Subcontract and may elect to employ fewer employees than the predecessor Subcontractor employed in connection with performance of the work.

(b) Except as provided in paragraph 49.3 of this clause, there shall be no employment opening under this Subcontract, and the Subcontractor and any sub-subcontractors shall not offer employment under this Subcontract, to any person prior to having complied fully with this obligation.

(i) The successor Subcontractor and its sub-subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Subcontractor and its sub-subcontractors shall decide any question concerning a service employee’s qualifications based upon the individual’s education and employment history, with particular emphasis on the employee’s experience on the predecessor Subcontract, and the Subcontractor may utilize employment screening processes only when such processes are provided for by the Subcontracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Subcontractor does not initially offer employment to all the predecessor Subcontract service employees, the obligation to offer employment shall continue for 90 days after the successor Subcontractor’s first date of performance on the Subcontract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bona fide offer of employment).

49.3 (a) Notwithstanding the obligation under paragraph 49.2 of this clause, the successor Subcontractor and any sub-subcontractors:

(i) May employ under this Subcontract any service employee who has worked for the Subcontractor or sub- subcontractor for at least three months immediately preceding the commencement of this Subcontract and who would otherwise face lay-off or discharge,

(ii) Are not required to offer a right of first refusal to any service employee(s) of the predecessor Subcontractor who are not service employees within the meaning of the Service Contract Act, 41 U.S.C. 6701(3), and

(iii) Are not required to offer a right of first refusal to any service employee(s) of the predecessor Subcontractor whom the Subcontractor or any of its sub-subcontractors reasonably believes, based on the particular service employee’s past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Subcontractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(b) In addition, any Subcontractor or sub-subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (*e.g.*, it must ensure that at least 35

percent of all of its employees reside within a HUBZone). The HUBZone small business Subcontractor or sub-subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(c) Nothing in this clause shall be construed to permit a Subcontractor or sub-subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart [19.13](#)), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

49.4 (a) The Subcontractor shall, not less than 30 days before completion of the Subcontractor's performance of services on the Subcontract, furnish SDSTA with a certified list of the names of all service employees working under this Subcontract and its sub-subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this Subcontract and its predecessor Subcontracts with either the current or predecessor Subcontractors or their sub-subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Subcontractor shall, in accordance with paragraph 49.5(a) of this clause, not less than 10 days before completion of the services on this Subcontract, furnish SDSTA with an updated certified list of the names of all service employees employed within the last month of Subcontract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the Subcontract and its predecessor Subcontracts with either the current or predecessor Subcontractors or their sub-subcontractors.

(b) Immediately upon receipt of the certified service employee list but not before Subcontract award, SDSTA shall provide the certified service employee list to the successor Subcontractor, and, if requested, to employees of the predecessor Subcontractor or sub-subcontractors or their authorized representatives.

(c) SDSTA will direct the predecessor Subcontractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor Subcontractor. Where a significant portion of the predecessor Subcontractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be—

- (i) Posted in a conspicuous place at the worksite; or
- (ii) Delivered to the service employees individually. If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

49.5 (a) If required in accordance with [52.222-41\(n\)](#), the predecessor Subcontractor shall, not less than 10 days before completion of this Subcontract, furnish SDSTA a certified list of the names of all service employees working under this Subcontract and its sub-subcontracts during the last month of Subcontract performance. The list shall also contain anniversary dates of employment of each service employee under this Subcontract and its predecessor Subcontracts either with the current or predecessor Subcontractors or their sub-subcontractors. If there are no changes to the workforce before the predecessor Subcontract is completed, then the predecessor Subcontractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of [52.222-41\(n\)](#) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Subcontractor shall submit a revised certified list not less than 10 days prior to performance completion.

(b) Immediately upon receipt of the certified service employee list but not before Subcontract award, SDSTA shall provide the certified service employee list to the successor Subcontractor, and, if requested, to employees of the predecessor Subcontractor or sub-subcontractors or their authorized representatives.

49.6 The Subcontractor and sub-subcontractor shall maintain the following records (regardless of format, e.g., paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(a) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee

meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor Subcontract to whom an offer was made.

(b) A copy of any record that forms the basis for any exemption claimed under this part.

(c) A copy of the service employee list provided to or received from the Subcontracting agency.

(d) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Subcontractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

49.7 Disputes concerning the requirements of this clause shall not be subject to the general disputes clause ([52.223-1](#)) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the Subcontractor, the contracting agency, the U.S. Department of Labor, and the service employees under the Subcontract or its predecessor Subcontract. SDSTA will refer any service employee who wishes to file a complaint, or ask questions concerning this Subcontract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: displaced@dol.gov.

49.8 The Subcontractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

49.9 If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Subcontractor or its sub-subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Subcontractor or its sub-subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

49.10 The Subcontractor shall take such action with respect to any such Subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Subcontractor, as a result of such direction, becomes involved in litigation with a sub-subcontractor, or is threatened with such involvement, the Subcontractor may request that SDSTA and the United States, through SDSTA and the Secretary, enter into such litigation to protect the interests of SDSTA and the United States.

49.11 SDSTA will withhold, or cause to be withheld, from the Subcontractor under this or any other Subcontract with the same Subcontractor, such sums as an authorized official of SDSTA or the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If SDSTA or the Administrator, upon final order of the Secretary, finds that the Subcontractor has failed to provide a list of the names of service employees working under the contract, SDSTA may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of Subcontract funds until such time as the list is provided to SDSTA.

49.12 SUB-SUBCONTRACTS.

In every sub-subcontract over the simplified acquisition threshold entered into in order to perform services under this Subcontract, the Subcontractor shall include a provision that ensures—

(a) That each sub-subcontractor will honor the requirements of paragraphs 49.2 through 49.3 of this clause with respect to the service employees of a predecessor sub-subcontractor or sub-subcontractors working under this Subcontract, as well as of a predecessor Subcontractor and its sub-subcontractors;

(b) That the sub-subcontractor will provide the Subcontractor with the information about the service employees of the sub-subcontractor needed by the Subcontractor to comply with paragraphs 49.4 and 49.5 of this clause; and

(c) The recordkeeping requirements of paragraph 49.6 of this clause.

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

(a) This Subcontract and employees working on this Subcontract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Subcontractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

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

51. REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

51.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) “Executive” means officers, managing partners, or any other employees in management positions.

(b) “First-tier subcontract” means a Subcontract awarded directly by SDSTA for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include SDSTA’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

(c) “Month of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier Subcontract is signed by SDSTA.

(d) “Total compensation” means the cash and noncash dollar value earned by the executive during SDSTA’s or the Subcontractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(i) Salary and bonus.

(ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(v) Above-market earnings on deferred compensation which is not tax-qualified.

(vi) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination

payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

51.2 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT.

Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires SDSTA to report information on Subcontract awards. The law requires all reported information be made public, therefore, SDSTA is responsible for notifying its Subcontractors that the required information will be made public.

51.3 DISCLOSURE OF CLASSIFIED INFORMATION.

Nothing in this clause requires the disclosure of classified information.

51.4 FIRST-TIER SUBCONTRACT INFORMATION.

Unless otherwise directed by the procurement officer, or as provided in paragraph 51.6 of this clause, by the

end of the month following the month of award of a first-tier Subcontract with a value of \$25,000 or more, the Subcontractor shall report the following information to the Procurement Administrator within 15 days of the award. SDSTA shall report the following information at <http://www.fsr.gov> for the first-tier Subcontract. (SDSTA shall follow the instructions at <http://www.fsr.gov> to report the data.

- (a) Unique identifier (DUNS Number) for the Subcontractor receiving the award and for the Subcontractor's parent company, if the Subcontractor has a parent company.
- (b) Name of the Subcontractor.
- (c) Amount of the Subcontract award.
- (d) Date of the Subcontract award.
- (e) A description of the products or services (including construction) being provided under the Subcontract, including the overall purpose and expected outcomes or results of the Subcontract.
- (f) Subcontract number (the Subcontract number assigned by SDSTA).
- (g) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (h) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (i) The prime contract number, and order number if applicable.
- (j) Awarding agency name and code.
- (k) Funding agency name and code.
- (l) Government contracting office code.
- (m) Treasury account symbol (TAS) as reported in FPDS.
- (n) The applicable North American Industry Classification System code (NAICS).

51.5 EXECUTIVE COMPENSATION OF THE FIRST-TIER SUBCONTRACTOR.

(a) Unless otherwise directed by the Procurement Administrator, within 15 days of the Subcontract award the Subcontractor shall report the names and total compensation of each of the five most highly compensated executives if —

- (i) In the Subcontractor's preceding fiscal year, the Subcontractor received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
- (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

(b) Unless otherwise directed by SDSTA, by the end of the month following the award of a first-tier Subcontract with a value of \$30,000 or more, and annually thereafter (calculated from the prime contract award date), the first-tier Subcontractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier Subcontractor for the first-tier Subcontractor's preceding completed fiscal year at <http://www.fsr.gov> if—

- (i) In the Subcontractor's preceding fiscal year, the Subcontractor received—
 - (A) 80 percent or more of its annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and Subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
- (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission

total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

51.6 SDSTA shall not split or break down first-tier Subcontract awards to a value less than \$30,000 to avoid the reporting requirements in paragraph 51.4.

51.7 SDSTA is required to report information on a first-tier Subcontract covered by paragraph 51.4 when the Subcontract is awarded. Continues reporting on the same Subcontract is not required unless one of the reported data elements changes during the performance of the Subcontract. SDSTA is not required to make further reports after the first-tier Subcontract expires.

51.8 If the Subcontractor in the previous tax year had gross income from all sources under \$300,000, SDSTA does not need to report awards for that Subcontractor.

51.9 The FSRS database at <http://fsrs.gov> will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the Subcontractor should notify SDSTA. If the SAM database information is incorrect, the Subcontractor is responsible for correcting this information.

52. ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS

52.1 DEFINITIONS. AS USED IN THIS CLAUSE—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

52.2 The Subcontractor, on completion of this contract, shall—

- (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in Subcontract performance, including, if applicable, the percentage of postconsumer material content; and
- (2) Submit this estimate to _____ [SDSTA Procurement Officer complete in accordance with agency procedures].

(End of clause)

Alternate I (May 2008).

As prescribed in [23.406\(d\)](#), redesignate paragraph 52.2 of the basic clause as paragraph 52.3 and add the following paragraph 52.2 to the basic clause:

52.2 The Subcontractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this Subcontract and hereby certify that the percentage of recovered material content for EPA-designated items met the applicable Subcontract specifications or other contractual requirements.

[Signature of the Officer or Employee]

[Typed Name of the Officer or Employee]

[Title]

[Name of Company, Firm, or Organization]

[Date]

(End of certification)

53. COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS

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

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

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

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

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

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

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
SERVICES SUBCONTRACT
TERMS AND CONDITIONS**

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1. PAYMENTS

1.1 Every two weeks, the Subcontractor may submit to SDSTA invoices or vouchers for labor costs in such form and detail and supported by such documents as provided below. Once a month, the Subcontractor may submit to SDSTA invoices or vouchers for all other costs in such form and detail and supported by such documents as provided below. Within 30 days after receipt of each invoice or voucher SDSTA shall, subject to the provisions of this Subcontract, make payment thereon as approved by SDSTA.

1.2 In connection with any discount offered, time will be computed from the date of completion of the performance of the services or from the date correct invoice or voucher is received at the office specified by SDSTA, whichever is later. Payment is made, for discount purposes, when the check is mailed.

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

1.4 APPLICABLE CREDITS.

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

1.5 CLAIMS FOR PAYMENTS.

Claims for payment shall be accompanied by such supporting documents and justification as SDSTA shall require.

1.6 [RESERVED]

2. WORKMANSHIP AND SAFETY

All work under this Subcontract shall be performed in a skillful, safe, and workmanlike manner. SDSTA may require (in writing) the Subcontractor to remove any employee which SDSTA deems incompetent, careless, or otherwise objectionable.

3. [RESERVED]

4. [RESERVED]

5. PERMITS

Except as otherwise directed by SDSTA, Subcontractor shall, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and municipal laws, codes, regulations, or directives and procedures issued by SDSTA in connection with the prosecution of work.

6. HAZARDOUS WASTE DISPOSAL

The Subcontractor shall comply with all applicable federal, state and local laws and regulations governing the transport, storage, treatment and disposal of regulated waste materials included in, or generated during the performance of this subcontract. The parties agree that all hazardous substances and waste are the property of the Subcontractor unless otherwise specified in a written agreement between SDSTA and SDSTA.

7. ENVIRONMENT, SAFETY AND HEALTH (ES&H)

7.1 APPLICABILITY.

This clause applies to all work under this subcontract

For the purpose of this clause:

- (a) Safety encompasses environment, safety, and health, including pollution prevention and waste minimization; and
- (b) Employees include sub-subcontractor employees at any tier.

7.2 ES&H POLICY.

Every Subcontractor employee is entitled to a safe and healthy work environment and the Subcontractor retains responsibility for the safety of its employees. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall comply with all applicable federal, state and local laws and regulations governing the safety and health of employees and the environment. The Subcontractor shall exercise a degree of care

commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of ES&H functions and activities becomes an integral and visible part of the Subcontractor's work planning and execution process.

8. [RESERVED]

9. INDEMNIFICATION

9.1 The Subcontractor agrees to indemnify, save harmless, and defend Fermi Research Alliance, LLC, the University of Chicago, Universities Research Association, Inc., and the United States Government and their agents and employees from and against any and all liabilities, claims, damages, losses, penalties, forfeitures, fines, suits, and the costs and

expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), arising out of or resulting from negligent performance of this Subcontract, provided such liability, claim, damage, loss, penalty, forfeiture, fine, or suit is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of property, or contamination of or adverse effects on the environment, or to any violation of governmental laws, rules, regulations, or orders caused in whole or in part by :

(a) Subcontractor's breach of any term or provision of the Subcontract documents, or

(b) Any negligent or willful act or omission of the Subcontractor, its employees, agents, of Subcontractors, material suppliers, or anyone for whose acts they may be liable, regardless of whether such liability, claim, damage, loss, penalty, forfeiture, fine, or suit is caused in part by a party indemnified hereunder. The obligations of the Subcontractor under this clause 9.1 will survive the final completion or termination of this Subcontract.

9.2 Except to the extent covered by insurance required under this Subcontract and the indemnification provisions required under this Subcontract, the Subcontractor and SDSTA waive consequential damages for claims, disputes or other matters arising out of or relating to this Subcontract.

10. SERVICE CONTRACT ACT OF 1965, AS AMENDED

10.1 This Subcontract is subject to the Service Contract Act of 1965 as amended, (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued there under (29 CFR Part 4).

10.2 (a) Each service employee employed in the performance of this Subcontract by the Subcontractor or any sub-subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this Subcontract.

(b) If there is such a wage determination attached to this Subcontract, SDSTA shall require that any class of service employee which is not listed therein, and which is to be employed under this Subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Subcontractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and those listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph 10.2.

(c) Such conforming procedure shall be initiated by the Subcontractor prior to the performance of Subcontract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Subcontractor to SDSTA no later than 30 days after such unlisted class of employees performs any Subcontract work. SDSTA shall review the proposed action and promptly submit a report of the action, together with its recommendation and all pertinent information including the position of the Subcontractor and the employees, through the Department, to the Wage and Hour

Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Department within 30 days of receipt that additional time is necessary.

(d) The final determination of the conformance action by the Wage and Hour Division shall be transmitted through the Department, to SDSTA which shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(e) (i) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(ii) In the case of a Subcontract modification, an exercise of an option or extension of an existing Subcontract, or in any other case where a Sub-contractor succeeds a Subcontract under which the classification in question was

previously conformed pursuant to this paragraph 10.2, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the Subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of Subcontract work by the unlisted class of employees, the Subcontractor shall advise SDSTA of the action taken but the other procedures in paragraph 10.2 (c) of this clause need not be followed.

(iii) No employee engaged in performing work on this Subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(iv) The wage rate and fringe benefits finally determined pursuant to paragraphs 10.2 (b) and (c) of this clause shall be paid to all employees performing in the classification from the first day on which work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced Subcontract work shall be a violation of the Act and this Subcontract.

(f) Upon discovery of failure to comply with paragraphs 10.2 (b) through 10.2 (e) (4) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced Subcontract work.

10.3 If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965, as amended, the term of this Subcontract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

10.4 The Subcontractor or sub-subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

10.5 In the absence of a minimum wage attachment for this Subcontract, neither the Subcontractor nor any sub- Subcontractor under this Subcontract shall pay any person performing work under the Subcontract (regardless of whether they are service employees) less than the minimum wage specified by section 6 (a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Subcontractor or any sub-subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

10.6 If this Subcontract succeeds a Subcontract, subject to the Service Contract Act of 1965, as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this Subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any sub-subcontractor under this Subcontract shall pay any service employee performing any of the Subcontract work (regardless of whether or not such employee was employed under the predecessor Subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would be entitled if employed under the predecessor Subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Subcontractor or sub-subcontractor under this Subcontract may be relieved of the foregoing obligation unless the limitations of paragraph 4.1 b (b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in

§ 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor Subcontract was not entered into as a result of arms-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor Subcontract was not entered into as a result of arm's- length negotiations, the Department of Labor will issue a new or revised wage determination setting forth the

applicable wage rates and fringe benefits. Such determination shall be made part of the Subcontract or sub-subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a Subcontract or sub-subcontract (53 Comp. Gen 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

10.7 The Subcontractor and any sub-subcontractor under this Subcontract shall notify each service employee commencing work on this Subcontract of the minimum wage and any fringe benefits required to be paid pursuant to this Subcontract, or shall post the wage determination attached to this Subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this Subcontract.

10.8 The Subcontractor or sub-subcontractor shall not permit any part of the services called for by this Subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or sub-subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Subcontractor or sub-subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

10.9 (a) The Subcontractor and each sub-subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified in subparagraphs

a) through (vi) of this paragraph for each employee subject to the Act and shall make them available for

inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

- b) Name and address and social security number of each employee.
 - c) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
 - d) The number of daily and weekly hours so worked by each employee.
 - e) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - f) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this Subcontract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the Labor Standards clause in paragraph 10.2 of this clause. A copy of the report required in paragraph 10.2 (c) of this clause shall be deemed to be such a list.
 - g) Any list of the predecessor Subcontractor's employees which had been furnished to the Subcontractor pursuant to paragraph 10.14(b) of this clause.
- (b) The Subcontractor shall also make available a copy of this Subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division.
- (c) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this Subcontract, and in the case of failure to produce such records, SDSTA, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.
- (d) The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

10.10 The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

10.11 There shall be withheld or caused to be withheld from the Subcontractor under this Subcontract or any other Subcontract or Government contract with the Subcontractor such sums as an appropriate officer of the Department of Labor requests, or such sums as may be necessary to pay underpaid employees employed by the Subcontractor or any sub-subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, SDSTA may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the Subcontract work. In such event, SDSTA may enter into other Subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.

10.12 The Subcontractor agrees to insert these clauses relating to the Service Contract Act of 1965 in all sub- Subcontracts subject to the Act.

10.13 SERVICE EMPLOYEE.

As used in clause 10, the term "service employee" means any person engaged in the performance of this Subcontract (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29 Code of Federal Regulations, as revised). The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a Subcontractor or sub- subcontractor and such persons.

10.14 (a) If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any sub-subcontractor under the Subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the Subcontract is being performed, the Subcontractor shall report such fact to SDSTA, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees

engaged in work on the Subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the Subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of Subcontract performance, such agreements shall be reported promptly after negotiation thereof.

(b) Not less than 10 days prior to completion of this Subcontract, the Subcontractor shall furnish to SDSTA a certified list of the names of all service employees on the Subcontractor's or sub-subcontractor's payroll during the last month of Subcontract performance. Such list shall also contain anniversary dates of employment on the Subcontract either with the current or predecessor Subcontractors of each such service employee. SDSTA shall turn over such list to the successor Subcontractor at the commencement of the succeeding Subcontract.

10.15 Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

10.16 (a) By entering into this Subcontract, the Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(b) No part of this Subcontract shall be sub-subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10.17 Notwithstanding any of the provisions in paragraphs 10.2 through 10.15 of this clause, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exceptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(a) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof) applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525);

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

10.18 Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen

employed on the Subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

10.19 An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; provided, however, that the amount of such credit may not exceed \$1.34 per hour. To utilize this proviso:

- (a) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (b) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (c) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;
- (d) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

10.20 Disputes arising out of the labor standards provisions of this Subcontract shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its sub-subcontractors) and SDSTA, the Department, the U.S. Department of Labor, or the employees or their representatives.

11. [RESERVED]

12. [RESERVED]

13. EXTRAS

Except as otherwise provided in this Subcontract, no payment for extras shall be made unless such extras and the price there-for have been authorized in writing by SDSTA.

14. [RESERVED]

15. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT

15.1 This clause applies to both Subcontracts subject to area prevailing wage determinations and Subcontracts subject to Subcontractor collective bargaining agreements.

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

15.3 The Subcontract price or Subcontract unit price labor rates will be adjusted to reflect increases or decreases by the Subcontractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with -

- (a) An increased or decreased wage determination applied to this Subcontract by operation of law; or
- (b) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this Subcontract, affects the minimum wage, and becomes applicable to this Subcontract under law.

15.4 Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph 15.3 of this clause, and to the accompanying increases or decreases in social security and unemployment

taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

15.5 The Subcontractor shall notify SDSTA of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by SDSTA in writing. The

Subcontractor shall promptly notify SDSTA of any decrease under this clause, but nothing in the clause shall preclude SDSTA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that SDSTA may reasonably require. Upon agreement of the parties, the Subcontract price or Subcontract unit price labor rates shall be modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

15.6 SDSTA or an authorized representative shall, until the expiration of 3 years after final payment under the Subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor.

NOTE: The following paragraphs 15.7, 15.8, 15.9 and 15.10 apply only in the event this Subcontract is a multiple year Subcontract or a Subcontract containing an option(s) to renew for an additional period(s). In that event, they apply in lieu of paragraphs 15.3, 15.4, and 15.5 above.

15.7 The wage determination, issued under the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year Subcontract or the beginning of each renewal option period, shall apply to this Subcontract. If no such determination has been made applicable to this Subcontract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206) current on the anniversary date of a multiple year Subcontract or the beginning of each renewal option period, shall apply to this Subcontract.

15.8 The Subcontract price or Subcontract unit price labor rates will be adjusted to reflect the Subcontractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Subcontractor as a result of:

(a) The Department of Labor wage determination applicable on the anniversary date of multiple year Subcontract, or at the beginning of the renewal option period. For example, the prior wage determination required a minimum wage rate of \$4.00 per hour. The Subcontractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Subcontractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(b) An increased or decreased wage determination otherwise applied to the Subcontract by operation of law; or

(c) An amendment to the Fair Labor Standards Act of 1938 that is enacted after the award of this Subcontract, affects the minimum wage, and becomes applicable to this Subcontract under law.

15.9 Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph

15.8 of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general administrative costs, overhead, or profit.

15.10 The Subcontractor shall notify SDSTA of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by SDSTA. The Subcontractor shall promptly notify SDSTA of any decrease under this clause, but nothing in this clause shall preclude SDSTA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that SDSTA may reasonably require. Upon agreement of the parties, the Subcontract price or Subcontract unit price labor rates shall be modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

16. INSPECTION OF SERVICES

16.1 DEFINITION. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

16.2 The Subcontractor shall provide and maintain an inspection system acceptable to SDSTA covering

the services under this Subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to SDSTA during contract performance and for as long afterwards as the contract requires.

16.3 SDSTA has the right to inspect and test all services called for by the Subcontract, to the extent practicable at all places and times during the term of the contract. SDSTA shall perform inspections and tests in a manner that will not unduly delay the work.

16.4 If any of the services performed do not conform with Subcontract requirements, SDSTA may require the Subcontractor to perform the services again in conformity with Subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, SDSTA may require the Subcontractor to take necessary action to ensure that future performance conforms to Subcontract requirements.

16.5 If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, SDSTA may—

- (a) By Subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
- (b) Terminate the Subcontract for default.

17. BUY AMERICAN ACT – SUPPLIES

17.1 Definitions. As used in this clause—

- (a) “Commercially available off-the-shelf (COTS) item”—
 - (i) Means any item of supply (including construction material) that is—
 - (A) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (B) Sold in substantial quantities in the commercial marketplace; and
 - (C) Offered to SDSTA, under a contract or Subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - (ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- (b) “Component” means an article, material, or supply incorporated directly into an end product.
- (c) “Cost of components” means—
 - (i) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (ii) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph 17.1(c)(i) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- (d) “Domestic end product” means—
 - (i) An unmanufactured end product mined or produced in the United States;
 - (ii) An end product manufactured in the United States, if—
 - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
 - (B) The end product is a COTS item.
- (e) “End product” means those articles, materials, and supplies to be acquired under the contract for public use.
- (f) “Foreign end product” means an end product other than a domestic end product.
- (g) “United States” means the 50 States, the District of Columbia, and outlying areas.

17.2 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

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

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

18. [RESERVED]

19. [RESERVED]

20. MINIMUM WAGES UNDER EXECUTIVE ORDER 13658

20.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "United States" means the 50 states and the District of Columbia.

(b) "Worker"—

(i) Means any person engaged in performing work on, or in connection with, a Subcontract covered by Executive Order 13658, and

(A) Whose wages under such Subcontract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the Subcontract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the Subcontract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

20.2 EXECUTIVE ORDER MINIMUM WAGE RATE.

(a) The Subcontractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this Subcontract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.

(b) The Subcontractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016 and annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this Subcontract.

(c) (i) The Subcontractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual

E.O. minimum wage, and for associated labor costs and relevant sub-subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Sub-subcontractors may be entitled to adjustments due to the new minimum wage, pursuant

to paragraph 20.2(b). Subcontractors shall consider any sub-subcontractor requests for such price adjustment.

(iii) The Procurement Administrator will not adjust the Subcontract price under this clause for any costs other than those identified in paragraph 20.2(c)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

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

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

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

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

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

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

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

20.3 (a) This clause applies to workers as defined in paragraph 20.1. As provided in that definition—

(A) Workers are covered regardless of the contractual relationship alleged to exist between the Subcontractor or sub-subcontractor and the worker;

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

(C) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(b) This clause does not apply to—

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

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

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

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

(C) Those employed in a bona fide executive, administrative, or professional capacity (29

U.S.C. 213(a)(1) and 29 CFR part 541).

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

20.5 PAYROLL RECORDS.

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

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker;
- (v) Any deductions made; and
- (vi) Total wages paid.

(b) The Subcontractor shall make records pursuant to paragraph 20.5(a) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Subcontractor shall also make such records available upon request of the Procurement Administrator.

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

(d) Failure to comply with this paragraph 20.5 shall be a violation of 29 CFR 10.26 and this Subcontract. Upon direction of the Administrator or upon the Procurement Administrator's own action, payment shall be withheld until such time as the noncompliance is corrected.

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

20.6 ACCESS. The Subcontractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

20.7 WITHHOLDING. The Procurement Administrator, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Subcontractor under this or any other Federal Subcontract with the same Subcontractor, sufficient to pay workers the full amount of wages required by this clause.

20.8 DISPUTES. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning Subcontractor compliance, the procedures for resolving disputes concerning a Subcontractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this Subcontract. These disputes include disputes between the Subcontractor (or any of its sub-subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

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

20.10 SUB-SUBCONTRACTOR COMPLIANCE. The Subcontractor is responsible for sub- subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due sub-subcontractor workers.

20.11 SUB-SUBCONTRACTS. The Subcontractor shall include the substance of this clause, including this

paragraph 20.11 in all sub-subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

21. SERVICE CONTRACT REPORTING REQUIREMENTS

21.1 As used in this clause, “Subcontract” means a Subcontract awarded directly by SDSTA for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include SDSTA’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to SDSTA’s general and administrative expenses or indirect costs.

21.2 The Subcontractor providing services under this Subcontract, with Subcontracts valued at or above the thresholds set forth in paragraph 21.3 must report the information in paragraph 21.4 at www.sam.gov, annually by October 31. If the Subcontractor fails to submit the report in a timely manner, the Procurement Administrator will exercise appropriate contractual remedies.

21.3 Reporting is required according to the following thresholds:

- (a) All cost-reimbursement, time-and-materials, and labor-hour service contracts and orders with an estimated total value above the simplified acquisition threshold.
- (b) All fixed-price service contracts awarded and orders issued according to the following thresholds:
 - (i) Awarded or issued in Fiscal Year 2014, with an estimated total value of \$2.5 million or greater.
 - (ii) Awarded or issued in Fiscal Year 2015, with an estimated total value of \$1 million or greater.
 - (iii) Awarded or issued in Fiscal Year 2016, and subsequent years, with an estimated total value of \$500,000 or greater.

21.4 The Subcontractor must report the following information:

- (a) Subcontract number (including Subcontractor name and DUNS number); and
- (b) The number of Subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

21.5 The information in paragraph 21.3 will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

EXHIBIT F
DEPARTMENT OF LABOR
WAGE DETERMINATION

WD 15-5377 (Rev.-4) was first posted on www.wdol.gov on 08/01/2017

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

Daniel W. Simms
Director

Division of
Wage Determinations

Wage Determination No.: 2015-5377
Revision No.: 4
Date Of Revision: 07/25/2017

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

State: South Dakota

Area: South Dakota Counties of Bennett, Butte, Corson, Dewey, Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Mellette, Perkins, Shannon, Stanley, Todd, Tripp, Ziebach

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		11.79
01012 - Accounting Clerk II		13.24
01013 - Accounting Clerk III		15.35
01020 - Administrative Assistant		17.58
01035 - Court Reporter		15.49
01041 - Customer Service Representative I		11.84
01042 - Customer Service Representative II		13.31
01043 - Customer Service Representative III		14.52
01051 - Data Entry Operator I		10.58
01052 - Data Entry Operator II		11.99
01060 - Dispatcher, Motor Vehicle		13.95
01070 - Document Preparation Clerk		11.39
01090 - Duplicating Machine Operator		11.39
01111 - General Clerk I		10.33
01112 - General Clerk II		11.27
01113 - General Clerk III		12.65
01120 - Housing Referral Assistant		15.94
01141 - Messenger Courier		9.33
01191 - Order Clerk I		10.95
01192 - Order Clerk II		11.95
01261 - Personnel Assistant (Employment) I		13.81
01262 - Personnel Assistant (Employment) II		15.45
01263 - Personnel Assistant (Employment) III		17.38
01270 - Production Control Clerk		16.37
01290 - Rental Clerk		10.77
01300 - Scheduler, Maintenance		12.79
01311 - Secretary I		12.79
01312 - Secretary II		14.31
01313 - Secretary III		15.94

01320 - Service Order Dispatcher	13.03
01410 - Supply Technician	17.58
01420 - Survey Worker	13.05
01460 - Switchboard Operator/Receptionist	11.19
01531 - Travel Clerk I	11.47
01532 - Travel Clerk II	12.17
01533 - Travel Clerk III	12.87
01611 - Word Processor I	11.39
01612 - Word Processor II	12.79
01613 - Word Processor III	14.31
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	17.15
05010 - Automotive Electrician	16.37
05040 - Automotive Glass Installer	15.61
05070 - Automotive Worker	15.61
05110 - Mobile Equipment Servicer	14.01
05130 - Motor Equipment Metal Mechanic	17.15
05160 - Motor Equipment Metal Worker	15.61
05190 - Motor Vehicle Mechanic	17.15
05220 - Motor Vehicle Mechanic Helper	13.22
05250 - Motor Vehicle Upholstery Worker	14.81
05280 - Motor Vehicle Wrecker	15.61
05310 - Painter, Automotive	16.37
05340 - Radiator Repair Specialist	15.61
05370 - Tire Repairer	11.31
05400 - Transmission Repair Specialist	17.15
07000 - Food Preparation And Service Occupations	
07010 - Baker	11.46
07041 - Cook I	11.62
07042 - Cook II	13.35
07070 - Dishwasher	9.40
07130 - Food Service Worker	9.82
07210 - Meat Cutter	13.03
07260 - Waiter/Waitress	9.35
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	18.34
09040 - Furniture Handler	13.33
09080 - Furniture Refinisher	18.34
09090 - Furniture Refinisher Helper	15.85
09110 - Furniture Repairer, Minor	18.24
09130 - Upholsterer	16.68
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	10.44
11060 - Elevator Operator	10.95
11090 - Gardener	14.61
11122 - Housekeeping Aide	10.95
11150 - Janitor	10.95
11210 - Laborer, Grounds Maintenance	11.37
11240 - Maid or Houseman	9.52
11260 - Pruner	10.25
11270 - Tractor Operator	13.52
11330 - Trail Maintenance Worker	11.37
11360 - Window Cleaner	12.15
12000 - Health Occupations	
12010 - Ambulance Driver	14.04
12011 - Breath Alcohol Technician	16.40
12012 - Certified Occupational Therapist Assistant	22.37
12015 - Certified Physical Therapist Assistant	22.37
12020 - Dental Assistant	16.03
12025 - Dental Hygienist	29.23
12030 - EKG Technician	24.89
12035 - Electroneurodiagnostic Technologist	24.89
12040 - Emergency Medical Technician	14.04

12071 - Licensed Practical Nurse I	14.66
12072 - Licensed Practical Nurse II	16.40
12073 - Licensed Practical Nurse III	18.27
12100 - Medical Assistant	13.37
12130 - Medical Laboratory Technician	17.38
12160 - Medical Record Clerk	15.74
12190 - Medical Record Technician	18.12
12195 - Medical Transcriptionist	14.43
12210 - Nuclear Medicine Technologist	35.84
12221 - Nursing Assistant I	11.32
12222 - Nursing Assistant II	12.73
12223 - Nursing Assistant III	13.89
12224 - Nursing Assistant IV	15.60
12235 - Optical Dispenser	15.57
12236 - Optical Technician	14.66
12250 - Pharmacy Technician	15.68
12280 - Phlebotomist	15.60
12305 - Radiologic Technologist	24.50
12311 - Registered Nurse I	22.19
12312 - Registered Nurse II	27.15
12313 - Registered Nurse II, Specialist	27.15
12314 - Registered Nurse III	32.84
12315 - Registered Nurse III, Anesthetist	32.84
12316 - Registered Nurse IV	39.36
12317 - Scheduler (Drug and Alcohol Testing)	20.30
12320 - Substance Abuse Treatment Counselor	17.84
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	13.72
13012 - Exhibits Specialist II	17.00
13013 - Exhibits Specialist III	20.78
13041 - Illustrator I	13.72
13042 - Illustrator II	17.00
13043 - Illustrator III	20.78
13047 - Librarian	18.82
13050 - Library Aide/Clerk	10.92
13054 - Library Information Technology Systems Administrator	17.00
13058 - Library Technician	12.29
13061 - Media Specialist I	13.02
13062 - Media Specialist II	14.56
13063 - Media Specialist III	16.24
13071 - Photographer I	12.70
13072 - Photographer II	14.21
13073 - Photographer III	17.60
13074 - Photographer IV	21.54
13075 - Photographer V	26.05
13090 - Technical Order Library Clerk	15.49
13110 - Video Teleconference Technician	12.78
14000 - Information Technology Occupations	
14041 - Computer Operator I	11.60
14042 - Computer Operator II	12.97
14043 - Computer Operator III	15.41
14044 - Computer Operator IV	16.16
14045 - Computer Operator V	20.32
14071 - Computer Programmer I	(see 1)
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	11.60
14160 - Personal Computer Support Technician	24.25

14170 - System Support Specialist	27.59
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	29.28
15020 - Aircrew Training Devices Instructor (Rated)	33.61
15030 - Air Crew Training Devices Instructor (Pilot)	40.44
15050 - Computer Based Training Specialist / Instructor	29.28
15060 - Educational Technologist	27.85
15070 - Flight Instructor (Pilot)	40.44
15080 - Graphic Artist	17.93
15085 - Maintenance Test Pilot, Fixed, Jet/Prop	40.44
15086 - Maintenance Test Pilot, Rotary Wing	40.44
15088 - Non-Maintenance Test/Co-Pilot	40.44
15090 - Technical Instructor	16.89
15095 - Technical Instructor/Course Developer	19.75
15110 - Test Proctor	13.04
15120 - Tutor	13.04
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	9.51
16030 - Counter Attendant	9.51
16040 - Dry Cleaner	10.86
16070 - Finisher, Flatwork, Machine	9.51
16090 - Presser, Hand	9.51
16110 - Presser, Machine, Drycleaning	9.51
16130 - Presser, Machine, Shirts	9.51
16160 - Presser, Machine, Wearing Apparel, Laundry	9.51
16190 - Sewing Machine Operator	11.45
16220 - Tailor	12.04
16250 - Washer, Machine	9.96
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	19.28
19040 - Tool And Die Maker	24.41
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	15.92
21030 - Material Coordinator	19.12
21040 - Material Expediter	19.12
21050 - Material Handling Laborer	11.00
21071 - Order Filler	9.75
21080 - Production Line Worker (Food Processing)	15.92
21110 - Shipping Packer	13.60
21130 - Shipping/Receiving Clerk	13.60
21140 - Store Worker I	11.35
21150 - Stock Clerk	15.37
21210 - Tools And Parts Attendant	15.92
21410 - Warehouse Specialist	15.92
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural welder	24.83
23019 - Aircraft Logs and Records Technician	18.84
23021 - Aircraft Mechanic I	22.23
23022 - Aircraft Mechanic II	24.83
23023 - Aircraft Mechanic III	25.95
23040 - Aircraft Mechanic Helper	16.54
23050 - Aircraft, Painter	20.95
23060 - Aircraft Servicer	18.84
23070 - Aircraft Survival Flight Equipment Technician	20.95
23080 - Aircraft worker	20.00
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	20.00
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	22.23
23110 - Appliance Mechanic	20.16
23120 - Bicycle Repairer	12.54
23125 - Cable splicer	29.72
23130 - Carpenter, Maintenance	14.84

23140 - Carpet Layer	18.98
23160 - Electrician, Maintenance	21.44
23181 - Electronics Technician Maintenance I	19.66
23182 - Electronics Technician Maintenance II	20.95
23183 - Electronics Technician Maintenance III	22.23
23260 - Fabric Worker	17.93
23290 - Fire Alarm System Mechanic	21.34
23310 - Fire Extinguisher Repairer	17.12
23311 - Fuel Distribution System Mechanic	25.60
23312 - Fuel Distribution System Operator	20.00
23370 - General Maintenance Worker	16.79
23380 - Ground Support Equipment Mechanic	22.23
23381 - Ground Support Equipment Servicer	18.84
23382 - Ground Support Equipment Worker	20.00
23391 - Gunsmith I	17.12
23392 - Gunsmith II	19.66
23393 - Gunsmith III	22.23
23410 - Heating, Ventilation And Air-Conditioning Mechanic	18.14
23411 - Heating, Ventilation And Air Contidioning Mechanic (Research Facility)	19.18
23430 - Heavy Equipment Mechanic	23.23
23440 - Heavy Equipment Operator	20.03
23460 - Instrument Mechanic	22.23
23465 - Laboratory/Shelter Mechanic	20.95
23470 - Laborer	11.00
23510 - Locksmith	20.32
23530 - Machinery Maintenance Mechanic	22.23
23550 - Machinist, Maintenance	16.70
23580 - Maintenance Trades Helper	15.85
23591 - Metrology Technician I	22.23
23592 - Metrology Technician II	23.52
23593 - Metrology Technician III	24.70
23640 - Millwright	21.14
23710 - Office Appliance Repairer	20.95
23760 - Painter, Maintenance	15.55
23790 - Pipefitter, Maintenance	19.92
23810 - Plumber, Maintenance	18.77
23820 - Pneudraulic Systems Mechanic	22.23
23850 - Rigger	22.23
23870 - Scale Mechanic	19.66
23890 - Sheet-Metal Worker, Maintenance	19.97
23910 - Small Engine Mechanic	18.98
23931 - Telecommunications Mechanic I	27.04
23932 - Telecommunications Mechanic II	28.59
23950 - Telephone Lineman	21.52
23960 - Welder, Combination, Maintenance	16.51
23965 - Well Driller	17.76
23970 - Woodcraft Worker	22.23
23980 - Woodworker	17.12
24000 - Personal Needs Occupations	
24550 - Case Manager	11.82
24570 - Child Care Attendant	9.26
24580 - Child Care Center Clerk	12.39
24610 - Chore Aide	10.40
24620 - Family Readiness And Support Services Coordinator	11.82
24630 - Homemaker	15.00
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	21.19
25040 - Sewage Plant Operator	18.14
25070 - Stationary Engineer	21.19
25190 - Ventilation Equipment Tender	15.43

25210 - Water Treatment Plant Operator	18.14
27000 - Protective Service Occupations	
27004 - Alarm Monitor	14.81
27007 - Baggage Inspector	11.45
27008 - Corrections Officer	15.39
27010 - Court Security Officer	18.09
27030 - Detection Dog Handler	14.45
27040 - Detention Officer	15.39
27070 - Firefighter	17.46
27101 - Guard I	11.45
27102 - Guard II	13.38
27131 - Police Officer I	18.61
27132 - Police Officer II	20.67
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	12.39
28042 - Carnival Equipment Repairer	13.27
28043 - Carnival Worker	9.39
28210 - Gate Attendant/Gate Tender	16.40
28310 - Lifeguard	11.34
28350 - Park Attendant (Aide)	18.35
28510 - Recreation Aide/Health Facility Attendant	13.38
28515 - Recreation Specialist	19.46
28630 - Sports Official	14.60
28690 - Swimming Pool Operator	17.67
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	19.66
29020 - Hatch Tender	19.66
29030 - Line Handler	19.66
29041 - Stevedore I	18.38
29042 - Stevedore II	20.95
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	37.52
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	25.87
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	28.49
30021 - Archeological Technician I	15.10
30022 - Archeological Technician II	16.89
30023 - Archeological Technician III	20.91
30030 - Cartographic Technician	20.91
30040 - Civil Engineering Technician	19.43
30051 - Cryogenic Technician I	23.17
30052 - Cryogenic Technician II	25.59
30061 - Drafter/CAD Operator I	15.10
30062 - Drafter/CAD Operator II	16.89
30063 - Drafter/CAD Operator III	18.82
30064 - Drafter/CAD Operator IV	23.17
30081 - Engineering Technician I	13.45
30082 - Engineering Technician II	15.10
30083 - Engineering Technician III	16.89
30084 - Engineering Technician IV	20.91
30085 - Engineering Technician V	25.59
30086 - Engineering Technician VI	30.96
30090 - Environmental Technician	18.90
30095 - Evidence Control Specialist	20.91
30210 - Laboratory Technician	18.82
30221 - Latent Fingerprint Technician I	23.17
30222 - Latent Fingerprint Technician II	25.59
30240 - Mathematical Technician	20.91
30361 - Paralegal/Legal Assistant I	17.18
30362 - Paralegal/Legal Assistant II	21.30
30363 - Paralegal/Legal Assistant III	26.06
30364 - Paralegal/Legal Assistant IV	31.53
30375 - Petroleum Supply Specialist	25.59
30390 - Photo-Optics Technician	20.20

30395 - Radiation Control Technician	25.59
30461 - Technical Writer I	21.02
30462 - Technical Writer II	25.71
30463 - Technical Writer III	31.10
30491 - Unexploded Ordnance (UXO) Technician I	23.85
30492 - Unexploded Ordnance (UXO) Technician II	28.85
30493 - Unexploded Ordnance (UXO) Technician III	34.58
30494 - Unexploded (UXO) Safety Escort	23.85
30495 - Unexploded (UXO) Sweep Personnel	23.85
30501 - Weather Forecaster I	23.17
30502 - Weather Forecaster II	28.18
30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2) 18.82
30621 - Weather Observer, Senior	(see 2) 20.91
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	28.85
31020 - Bus Aide	11.42
31030 - Bus Driver	15.29
31043 - Driver Courier	11.71
31260 - Parking and Lot Attendant	10.52
31290 - Shuttle Bus Driver	13.61
31310 - Taxi Driver	11.67
31361 - Truckdriver, Light	13.61
31362 - Truckdriver, Medium	14.53
31363 - Truckdriver, Heavy	17.23
31364 - Truckdriver, Tractor-Trailer	17.23
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	14.07
99030 - Cashier	9.66
99050 - Desk Clerk	10.54
99095 - Embalmer	24.42
99130 - Flight Follower	23.85
99251 - Laboratory Animal Caretaker I	13.13
99252 - Laboratory Animal Caretaker II	14.07
99260 - Marketing Analyst	25.78
99310 - Mortician	24.42
99410 - Pest Controller	19.38
99510 - Photofinishing Worker	12.53
99710 - Recycling Laborer	13.04
99711 - Recycling Specialist	15.44
99730 - Refuse Collector	11.92
99810 - Sales Clerk	11.88
99820 - School Crossing Guard	12.66
99830 - Survey Party Chief	18.50
99831 - Surveying Aide	11.91
99832 - Surveying Technician	15.49
99840 - Vending Machine Attendant	14.12
99841 - Vending Machine Repairer	16.94
99842 - Vending Machine Repairer Helper	12.89

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors, applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for

reasons resulting from, or to assist a family member (or person who is like family to the employee) who is the victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.41 per hour or \$176.40 per week or \$764.40 per month

HEALTH & WELFARE EO 13706: \$4.13 per hour, or \$165.20 per week, or \$715.87 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor, 3 weeks after 10 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (See 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am.

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If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

**** HAZARDOUS PAY DIFFERENTIAL ****

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**** SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS ****

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition (Revision 1), dated September 2015, unless otherwise indicated.

**** REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE, Standard Form 1444 (SF-1444) ****

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract, a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order the proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the U.S. Department of Labor, Wage and Hour Division, for review (See 29 CFR 4.6(b)(2)(ii)).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour Division's decision to the contractor.
- 6) Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1)).