

general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

3. The Subcontractor shall cooperate fully with any Federal agency and/or NREL investigating a possible violation described in paragraph (B) of this clause.
4. The DOE Contracting Officer may --
 - (i) Offset the amount of the kickback against any monies owed by NREL under this subcontract and/or
 - (ii) Direct that the Subcontractor withhold from sums owed the lower-tier subcontractor the amount of the kickback. The DOE Contracting Officer may order that monies withheld under subdivision (C)(4)(ii) of this clause be paid over to NREL or the Government unless NREL or the Government has already offset those monies under subdivision (C)(4)(i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.
5. The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (C)(5) but excepting subparagraph (C)(1), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

CLAUSE 7 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

Derived from FAR 52-203-12

(Applies to subcontracts exceeding \$100,000)

A. Definitions.

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

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

1. The awarding of any Federal contract.
2. The making of any Federal grant.
3. The making of any Federal loan.
4. The entering into of any cooperative agreement.
5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"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. 450 B) and include Alaskan Natives.

"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.

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

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

1. An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
2. A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
3. A special Government employee, as defined in section 202, Title 18, United States Code.
4. 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.

"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.

"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.

"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.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for

less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibitions.

1. 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: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
2. 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, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - a. The prohibition on the use of appropriated funds, in subparagraph (B)(1) 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 not directly related to a covered Federal action.
 - b. For purposes of subdivision (B)(3)(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 an 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 services expressly authorized by subdivision (B)(3)(i)(a) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- a. The prohibition on the use of appropriated funds; in subparagraph (B)(1) of this clause, does not apply in the case of --
1. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 2. Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that

Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- b. For purposes of subdivision (B)(3)(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 contract 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 provide 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 services expressly authorized by subdivisions (B)(3)(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.

C. Disclosure.

- 1. The Subcontractor who requests or receives from an agency a Federal contract shall file with that agency 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 (B)(1) of this clause, if paid for with appropriated funds.

2. 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 (C)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
3. The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
4. All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the Subcontractor. The Subcontractor shall submit all disclosures to the NREL Subcontract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

D. Agreement.

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

E. Penalties.

1. Any person who makes an expenditure prohibited under paragraph (A) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (B) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
2. Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

F. Cost allowability.

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

CLAUSE 8 - AUDIT AND RECORDS -- NEGOTIATION (JUN 1999)

Derived from FAR 52.215-2 (FD)

(Applies to subcontracts exceeding \$100,000) (Use Alternate II of this clause for Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other non-profit organizations)

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

B. Examination of Costs

If this a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.

C. Cost or pricing data

If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, 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 computation and projections, related to --

1. The proposal for the subcontract, lower-tier subcontract, or modification;
2. The discussions conducted on the proposal(s), including those related to negotiating;
3. Pricing of the subcontract, lower-tier subcontract, or modification; or
4. Performance of the subcontract, lower-tier subcontract, or modification.

D. Comptroller General

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
2. This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

E. Reports

If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --

1. The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
2. The data reported.

F. Availability

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

1. If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
2. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

G. The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (G), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and --

1. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
2. For which cost or pricing data are required; or
3. That require the lower-tier subcontractor to furnish reports as discussed in paragraph (E) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.

Alternate II (JUN 1999)

(For Cost-reimbursement subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (H) shall be added.)

- H. The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

CLAUSE 9 - ALLOWABLE COST AND PAYMENT (APR 1998)

Derived from FAR 52.216-7

(For cost reimbursement subcontracts) (For educational institutions, substitute subpart 31.3; For State and Local Governments, substitute subpart 31.6; For other non-profit organizations, substitute subpart 31.7. See FAR 16.307(a))

- A. Invoicing.

NREL shall make payments to the Subcontractor when requested as work progresses, but (except for small business concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by the NREL Subcontract Administrator in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this subcontract and the terms of this subcontract. The Subcontractor may submit to an authorized representative of the NREL Subcontract Administrator, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this subcontract.

- B. Reimbursing costs.

1. For the purpose of reimbursing allowable costs (except as provided in subparagraph (B)(2) of this section, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --
 - (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the subcontract;
 - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --
 - (a) Materials issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
 - (b) Direct labor;
 - (c) Direct travel;
 - (d) Other direct in-house costs; and
 - (e) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for purposes of obtaining reimbursement under Government contracts or subcontracts; and

- (iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Subcontractor's lower-tier subcontractors under similar cost standards.
- 2. Subcontractor contributions to any pension or other post retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Subcontractor pays the contribution to the fund within thirty (30) days after the close of the period covered. Payments made thirty (30) days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Subcontractor actually makes the payment.
- 3. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (G) of this clause, allowable indirect costs under this subcontract shall be obtained by applying indirect costs rates established in accordance with paragraph (D) of this clause.
- 4. Any statements in specifications or other documents incorporated in this subcontract by reference designating performance of services or furnishing of materials at the Subcontractor's expense or at no cost to NREL shall be disregarded for purposes of cost-reimbursement under this clause.

C. Small business concerns.

A small business concern may be paid more often than every two (2) weeks and may invoice and be paid for recorded costs for items or services purchased directly for the subcontract, even though the concern has not yet paid for those items or services.

D. Final indirect costs rates.

- 1. Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
- 2.
 - i. The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.
 - ii. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative or NREL Subcontract Administrator and the Subcontractor shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.

3. The Subcontractor and the appropriate Government representative or NREL Subcontract Administrator shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify
 - (i) The agreed-upon final annual indirect cost rates,
 - (ii) The bases to which the rates apply,
 - (iii) The periods for which the rates apply,
 - (iv) Any specific indirect cost items treated as direct costs in the settlement, and
 - (v) The affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract/subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into this subcontract upon execution.
4. Within one hundred and twenty (120) days after settlement of the final indirect cost rates covering the year in which this subcontract is physically complete (or longer, if approved in writing by the NREL Subcontract Administrator), the Subcontractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
5. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

E. Billing rates.

Until final annual indirect cost rates are established for any period, NREL shall reimburse the Subcontractor at billing rates established by the NREL Subcontract Administrator, or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

1. Shall be the anticipated final rates; and
2. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

F. Quick-closeout procedures.

Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

G. Audit.

At any time or times before final payment, the NREL Subcontract Administrator may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be

1. Reduced by amounts found by the NREL Subcontract Administrator not to constitute allowable costs; or

2. Adjusted for prior overpayments or underpayments.

H. Final payment.

1. Upon approval of a completion invoice or voucher submitted by the Subcontractor in accordance with paragraph (D)(4) of this clause, and upon the Subcontractor's compliance with all terms of the subcontract, NREL shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
2. The Subcontractor shall pay to NREL any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under this subcontract, to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by NREL. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amount shall be allowable costs if approved by the NREL Subcontract Administrator. Before final payment under this subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --
 - (i) An assignment to NREL, in form and substance satisfactory to the NREL Subcontract Administrator, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by NREL under this subcontract; and
 - (ii) A release discharging NREL/Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --
 - (a) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (b) Claims (including reasonable incidental expenses) based upon liabilities of the Subcontractor to third parties arising out of the performance of this subcontract; **provided;** that the claims are not known to the Subcontractor on the date of the execution of the release, and that the Subcontractor gives notice of the claims in writing to the NREL Subcontract Administrator within 6 years following the release date or notice of final payment date, whichever is earlier; and
 - (c) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of this subcontract, excluding, however, any expenses arising from the Subcontractor's indemnification of NREL/Government against patent liability.

CLAUSE 10 - FIXED FEE (MAR 1997)

Derived from FAR 52.216-8

(Applies to cost plus fixed fee subcontracts)

- A. NREL shall pay the Subcontractor for performing this subcontract the fixed fee specified in the Schedule.
- B. Payment of the fixed fee shall be made as specified in the Schedule; **provided**, that after payment of eighty five (85) percent of the fixed fee, the NREL Subcontract Administrator may withhold further payment of fee until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The NREL Subcontract Administrator shall release seventy five (75) percent of all fee withholds under this subcontract after receipt of the certified final indirect cost rates proposal covering the year of physical completion of this subcontract, **provided** the Subcontractor has satisfied all other subcontract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The NREL Subcontract Administrator may release up to ninety (90) percent of the fee withheld under this subcontract based on the Subcontractor's past performance related to the submission and settlement of final indirect cost rate proposals.

CLAUSE 11 - COST SUBCONTRACT - NO FEE (APR 1984)

Derived from FAR 52.216-11

(Applies to cost reimbursement subcontracts)

- A. NREL shall not pay the Subcontractor a fee for performing this subcontract.
- B. After payment of eighty (80) percent of the total estimated cost shown in the Schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000 whichever is less.

CLAUSE 12 - COST-SHARING SUBCONTRACT--NO FEE (APR 1984)

Derived from FAR 52.216-12

(Applies to cost sharing subcontracts)

- A. NREL shall not pay to the Subcontractor a fee for performing this subcontract.
- B. After paying 80 percent of NREL's share of the total estimated cost of performance shown in the Schedule, the NREL Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount that the NREL Subcontract Administrator considers necessary to protect NREL's/Government's interest. This reserve shall not exceed one percent of NREL's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

CLAUSE 13 - PREDETERMINED INDIRECT COST RATES (APR 1998)

Derived from FAR 52.216-15

(Applies to cost reimbursement research and development subcontracts with educational institutions when predetermined indirect cost rates are used)

- A. Notwithstanding the Allowable Cost and Payment clause of this subcontract, the allowable indirect costs under this subcontract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties as specified below.
- B. 1. The Subcontractor shall submit an adequate final indirect cost rate proposal to the NREL Subcontract Administrator (or cognizant Federal agency official) and auditor within the six (6)-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Subcontractor and granted in writing by the NREL Subcontract Administrator. The Subcontractor shall support its proposal with adequate supporting data.
2. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The appropriate Government representative and the NREL Subcontract Administrator shall establish the final indirect cost rates as promptly as practical after receipt of the Subcontractor's proposal.
- C. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this subcontract.
- D. Predetermined rate agreements in effect on the date of this subcontract shall be incorporated into the subcontract Schedule. The NREL Subcontract Administrator (or cognizant Federal agency official) and Subcontractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify--
1. The agreed-upon predetermined indirect cost rates,
 2. The bases to which the rates apply,
 3. The period for which the rates apply, and
 4. The specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

The indirect cost rate agreement shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The agreement is incorporated into this subcontract upon execution.

- E. Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Subcontractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the NREL Subcontract Administrator (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

- F. Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.
- G. Allowable indirect costs for the period from the beginning of performance until the end of the Subcontractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

CLAUSE 14 - UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)

Derived from FAR 52.219-8 (FD)

(Applies to subcontracts exceeding \$100,000)

- A. It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their lower-tier subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.
- B. The Subcontractor hereby agrees to carry out this policy in the awarding of 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 awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.
- C. Definitions.

As used in this subcontract--

1. "Small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
2. "HUBZone small business concern" means a small business concern that appear on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
3. "Small business concern owned and controlled by socially and economically disadvantaged individuals" means an offeror that represents, as part of its offer, that-
 - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

- (ii) No material change in disadvantaged ownership and control has occurred since its certification;
- (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-NET).

4. "Small business concern owned and controlled by women" means a small business concern --

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

D. Subcontractors acting in good faith may rely on written representations by their lower-tier subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

CLAUSE 15 - PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

Derived from FAR 52.222-2

(Applies to cost reimbursement subcontracts exceeding \$100,000)

A. The use of overtime is authorized under this subcontract if the overtime premium does not exceed * _____ or the overtime premium is paid for work --

- 1. Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- 2. By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- 3. To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
- 4. That will result in lower overall costs to NREL/Government.

- B. Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall --
1. Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the NREL Subcontract Administrator to evaluate the necessity for the overtime;
 2. Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule;
 3. Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected subcontract; and
 4. Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

* *Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (A)(1) through (A)(4) of the clause.*

**CLAUSE 16 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT --
OVERTIME COMPENSATION (JUL 1995)**

Derived from FAR 52.222-4 (FD)

(Applies to subcontracts exceeding \$100,000 that require or involve the employment of laborers or mechanics)

A. Overtime requirements.

No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the provisions set forth in paragraph (A) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory), and/or NREL, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (A) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (A) of this clause.

C. Withholding for unpaid wages and liquidated damages.

The NREL Subcontract Administrator shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (B) of this clause.

D. Payrolls and basic records.

1. The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three (3) years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
2. The records to be maintained under paragraph (D)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of Department of Energy, NREL, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

E. Lower-tier Subcontracts.

The Subcontractor or lower-tier subcontractor shall insert in any lower-tier subcontracts exceeding \$100,000 the provisions set forth in paragraphs (A) through (E) of this clause and also a clause requiring the lower-tier subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (A) through (E) of this clause.

CLAUSE 17 - WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

Derived from FAR 52.222-20

(Applies to subcontracts for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

If this subcontract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C.35-45), the following terms and conditions apply:

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

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C.40).

CLAUSE - EQUAL OPPORTUNITY (FEB 1999)

Derived from FAR 52.222-26 (FD)

- A. If, during any 12-month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with subparagraphs B (1) through (11) below. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.
- B. During performance of this subcontract, the Subcontractor agrees as follows:
1. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
 2. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
 - (i) Employment,
 - (ii) Upgrading,
 - (iii) Demotion,
 - (iv) Transfer,
 - (v) Recruitment or recruitment advertising,
 - (vi) Layoff or termination,
 - (vii) Rates of pay or other forms of compensation, and
 - (viii) Selection for training, including apprenticeship.
 3. The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.

4. The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
5. The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the NREL Subcontract Administrator advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
7. The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of contract award, the subcontractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
8. The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
9. If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
10. The Subcontractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each lower-tier subcontractor or vendor.
11. The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL subcontract administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided,

that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.

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

CLAUSE 19 - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

Derived from FAR 52.222-35 (FD)

(Applies to subcontracts exceeding \$10,000)

- A. Definitions. As used in this clause --

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Subcontractor's organization" means employment openings for which no consideration will be given to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who --

1. Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or
2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975.

- B. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as --

- (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

C. Listing openings.

- 1. The Subcontractor agrees to list all employment openings existing at subcontract award or occurring during subcontract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Subcontractor facility, including one not connected with performing this subcontract. An independent corporate affiliate is exempt from this requirement.
- 2. State and Local Government agencies holding Federal contracts or subcontracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- 3. The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.
- 4. Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts/subcontracts. The Subcontractor may advise the State system when it is no longer bound by this subcontract clause.

D. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

E. Postings.

1. The Subcontractor agrees to post employment notices stating
 - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and
 - (ii) The rights of applicants and employees.
2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the NREL Subcontract Administrator.
3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

F. Noncompliance.

If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

G. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

CLAUSE 20 - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

Derived from FAR 52.222-36 (FD)

(Applies to subcontracts exceeding \$10,000)

A. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
2. The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.

B. Postings.

1. The Subcontractor agrees to post employment notices stating --
 - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall

be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the DOE Contracting Officer.

3. The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

C. Noncompliance.

If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

D. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

CLAUSE 21 - EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

Derived from FAR 52.222-37 (FD)

(Applies to subcontracts exceeding \$10,000)

- A. Unless the Subcontractor is a State or Local Government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on:
 1. The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Subcontractor by job category and hiring location; and
 2. The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- B. The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- C. Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- D. The employment activity report required by paragraph (A)(2) of this clause shall reflect total hires during the most recent twelve (12)-month period as of the ending date selected for the employment profile report required by paragraph (A)(1) of this clause. Subcontractors may select an ending date:

1. As of the end of any pay period during the period January through March 1st of the year the report is due, or
 2. As of December 31, if the Subcontractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- E. The count of veterans reported according to paragraph (A) of this clause shall be based on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- F. Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every lower-tier subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

CLAUSE 22 - AUTHORIZATION AND CONSENT (JUL 1995)
Derived from FAR 52-227-1 (FD)

- A. The Government authorizes and consents to all use and manufacture, in performing this subcontract or any subcontract at any tier, of any invention described in and covered by a United States patent
1. Embodied in the structure or composition of any article the delivery of which is accepted by the NREL/Government under this subcontract or;
 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with--
 - (i) Specifications or written provisions forming a part of this subcontract or
 - (ii) Specific written instructions given by the Government working through NREL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this subcontract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- B. The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this

clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

ALTERNATE I (APR 1984)

Alternate I of this clause is applicable if this award is for the conduct of research, development, or demonstration

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this subcontract or any subcontract at any tier.

ALTERNATE II (APR 1984)

Alternate II of this clause is applicable if this award includes an order or lower-tier subcontract for communication services and facilities

The following is substituted for paragraph (A) of the clause:

- A. The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this subcontract for communication services and facilities for which rates, charges, and tariffs are not established by a Government regulatory body, of any invention described in and covered by a United States patent
 - 1. Embodied in the structure or composition of any article the delivery of which is accepted by the Government through NREL under this subcontract or
 - 2. Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with specifications or written provisions forming a part of this subcontract or with specific written instructions given by the DOE through NREL directing the manner of performance.

CLAUSE 23 - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

Derived from FAR 52.227-2

(Applies to construction, research, development, or demonstration, subcontracts exceeding \$100,000)

- A. The Subcontractor shall report to the DOE through NREL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- B. In the event of any claim or suit against NREL/Government on account of any alleged patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall

furnish to the Government, when requested by the DOE through NREL, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.

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

CLAUSE 24 - PATENT INDEMNITY (APR 1984)

Derived from FAR 52.227-3

(The provisions of this clause shall not be applicable if this award is for the conduct of research, development, or demonstration)

- A. The Subcontractor shall indemnify the NREL/Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this subcontract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- B. This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the NREL/Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to
1. An infringement resulting from compliance with specific written instructions of the DOE through NREL directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor,
 2. An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or
 3. A claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

ALTERNATE I (APR 1984)

Alternate I of this clause is not applicable to the items specifically listed and/or identified

The following paragraph (C) is added to the clause:

- C. This patent indemnification shall not apply to the following items:
-

[List and/or identify the items to be excluded from this indemnity.]

ALTERNATE II (APR 1984)

Alternate II of this clause is applicable to the items specifically listed and/or identified

The following paragraph (C) is added to the clause:

C. This patent indemnification shall cover the following items:

[List and/or identify the items to be included under this indemnity.]

ALTERNATE III (JUL 1995)

Alternate III of this clause is applicable if this award includes a lower-tier subcontract for communication services and facilities

The following paragraph is added to the clause:

- () As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this subcontract and covering those communications services and facilities
1. That are or have been sold or offered for sale by the Subcontractor to the public,
 2. That can be provided over commercially available equipment, or
 3. That involve relatively minor modifications.

CLAUSE 25 - INSURANCE--LIABILITY TO THIRD PERSONS (SPECIAL - MAY 1999)

Derived from FAR 52.228-7

(Applies to cost reimbursement subcontracts)

- A.
1. Except as provided in subparagraph (A)(2) of this clause, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the NREL Subcontract Administrator may require under this subcontract.
 2. The Subcontractor may, with the approval of the NREL Subcontract Administrator, maintain a self-insurance program; **provided** that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.
 3. The Subcontractor shall provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in this clause, with insurers approved by the NREL Subcontract Administrator.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As required by law	As required by law	
Employer's Liability	\$100,000	\$100,000	
Comprehensive General Liability	\$500,000	\$500,000	\$100,000
Automobile Liability	\$200,000	\$500,000	\$20,000

- B. The Subcontractor agrees to submit for the NREL Subcontract Administrator's approval, to the extent and in the manner required by the NREL Subcontract Administrator, any other insurance that is maintained by the Subcontractor in connection with the performance of this subcontract and for which the Subcontractor seeks reimbursement.
- C. The Subcontractor shall be reimbursed --
1. For that portion
 - (i) Of the reasonable cost of insurance allocable to this subcontract, and
 - (ii) Required or approved under this clause; and
 2. For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by NREL/Government. These liabilities are for --
 - (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or
 - (ii) Death or bodily injury.
- D. NREL's/Government's liability under paragraph (C) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- E. The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-
1. For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;

2. For which the Subcontractor has failed to insure or to maintain insurance as required by the NREL Subcontract Administrator; or
 3. That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of --
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this subcontract is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this subcontract.
- F. The provisions of paragraph (E) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this subcontract, other than insurance required in accordance with this clause; **provided**, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.
- G. If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall --
1. Immediately notify the NREL Subcontract Administrator and promptly furnish copies of all pertinent papers received;
 2. Authorize NREL/Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
 3. Authorize NREL/Government representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by the NREL/Government, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with NREL/Government representatives in any such claim or litigation.

CLAUSE 26 - LIMITATION OF COST (APR 1984)

Derived from FAR 52.232-20

(Applies to fully funded, cost reimbursement subcontracts)

- A. The parties estimate that performance of this subcontract, exclusive of any fee, will not cost NREL more than --
1. The estimated cost specified in the Schedule or,

2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

- B. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that --
 1. The costs the Subcontractor expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
 2. The total cost for the performance of this subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- C. As part of the notification, the Subcontractor shall provide the NREL Subcontract Administrator a revised estimate of the total cost of performing this subcontract.
- D. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
 1. NREL is not obligated to reimburse the Subcontractor for cost incurred in excess of
 - (i) The estimated cost specified in the Schedule or,
 - (ii) If this is a cost-sharing subcontract, the estimated cost to NREL specified in the Schedule; and
 2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the NREL Subcontract Administrator --
 - (i) Notifies the Subcontractor in writing that the estimated cost has been increased and
 - (ii) Provides a revised estimated total cost of performing this subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- E. No notice, communication, or representation in any form other than that specified in subparagraph (D)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect this subcontract's estimated cost to NREL. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the estimated cost or, if this is a cost-sharing subcontract, for any costs in excess of the estimated cost to NREL specified in the Schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.

- F. If the estimated cost specified in the Schedule is increased, any costs the Subcontractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G. Change orders shall not be considered an authorization to exceed the estimated cost to NREL specified in the Schedule, unless they contain a statement increasing the estimated cost.
- H. If this subcontract is terminated or the estimated cost is not increased, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.

CLAUSE 27 - LIMITATION OF FUNDS (APR 1984)

Derived from FAR 52.232-22

(Applies to incrementally funded, cost reimbursement subcontracts)

- A. The parties estimate that performance of this subcontract will not cost NREL more than
 - 1. The estimated cost specified in the Schedule or,
 - 2. If this is a cost-sharing subcontract, NREL's share of the estimated cost specified in the Schedule.

The Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within the estimated cost, which, if this is a cost-sharing subcontract, includes both NREL's and the Subcontractor's share of the cost.

- B. The Schedule specifies the amount presently available for payment by NREL and allotted to this subcontract, the items covered, NREL's share of the cost if this is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that NREL will allot additional funds incrementally to the subcontract up to the full estimated cost to NREL specified in the Schedule, exclusive of any fee. The Subcontractor agrees to perform, or have performed, work on the subcontract up to the point at which the total amount paid and payable by NREL under the subcontract approximates but does not exceed the total amount actually allotted by NREL to the subcontract.
- C. The Subcontractor shall notify the NREL Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this subcontract in the next sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75) percent of--
 - 1. The total amount so far allotted to the subcontract by NREL or,
 - 2. If this is a cost-sharing subcontract, the amount then allotted to the subcontract by NREL plus the Subcontractor's corresponding share.

The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

- D. Sixty (60) days before the end of the period specified in the Schedule, the Subcontractor shall notify the NREL Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.
- E. If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Subcontractor's written request the NREL Subcontract Administrator will terminate this subcontract on that date in accordance with the provisions of the Termination clause of this subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the NREL Subcontract Administrator may terminate this subcontract on that later date.
- F. Except as required by other provisions of this subcontract, specifically citing and stated to be an exception to this clause --
1. NREL is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by NREL to this subcontract; and
 2. The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of this subcontract) or otherwise incur costs in excess of --
 - (i) The amount then allotted to the subcontract by NREL or;
 - (ii) If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, until the NREL Subcontract Administrator notifies the Subcontractor in writing that the amount allotted by NREL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by NREL to this subcontract.
- G. The estimated cost shall be increased to the extent that
1. The amount allotted by NREL or,
 2. If this is a cost-sharing subcontract, the amount then allotted by NREL to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the Schedule.
- If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- H. No notice, communication, or representation in any form other than that specified in subparagraph (F)(2) above, or from any person other than the NREL Subcontract Administrator, shall affect the amount allotted by NREL to this subcontract. In the absence of the specified notice, NREL is not obligated to reimburse the Subcontractor for any costs in excess of the total amount allotted by NREL to this subcontract, whether incurred during the course of the subcontract or as a result of termination.

- I. When and to the extent that the amount allotted by NREL to the subcontract is increased, any costs the Subcontractor incurs before the increase that are in excess of --
 - 1. The amount previously allotted by NREL or;
 - 2. If this is a cost-sharing subcontract, the amount previously allotted by NREL to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the NREL Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
- J. Change orders shall not be considered an authorization to exceed the amount allotted by NREL specified in the Schedule, unless they contain a statement increasing the amount allotted.
- K. Nothing in this clause shall affect the right of NREL/Government to terminate this subcontract. If this subcontract is terminated, NREL and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.
- L. If NREL does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this subcontract.

CLAUSE 28 - BANKRUPTCY (JUL 1995)

Derived from FAR 52.242-13

(Applies to subcontracts exceeding \$100,000)

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

CLAUSE 29 - STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (AUG 1989)

Derived from FAR 52.242-15

- A. The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety

(90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either --

1. Cancel the stop-work order; or
 2. Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if --
1. The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
 2. The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided, that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.
- C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

Alternate I (Apr 1984)

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

CLAUSE 30 - CHANGES - COST REIMBURSEMENT (AUG 1987) AND ALTERNATE V - RESEARCH AND DEVELOPMENT (AUG 1987)

Derived from FAR 52.243-2

- A. The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
1. Drawings, designs, or specifications.

2. Method of shipment or packing.
 3. Place of inspection, delivery, or acceptance.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the NREL Subcontract Administrator shall make an equitable adjustment in the --
1. Estimated cost or delivery or completion schedule, or both;
 2. Amount of any fixed fee; and
 3. Other affected terms and shall modify the subcontract accordingly.
- C. The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost clause or Limitation of Funds article of this subcontract.

CLAUSE 31 - LOWER-TIER SUBCONTRACTS (AUG 1998)

Derived from FAR 52.244-2

(Applies to all cost reimbursement subcontracts; and letter, fixed price, time and material, and labor hour subcontracts exceeding \$100,000)

A. Definitions.

As used in this clause-

"Approved purchasing system" means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR)

"Consent to lower-tier subcontract" means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.

"Lower-tier subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier subcontractor to furnish supplies or services for performance of the prime contract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- B. This clause does not apply to lower-tier subcontracts for special test equipment when the subcontract contains the clause at FAR 52.245-18, Special Test Equipment.
- C. When this clause is included in a fixed-price type subcontract, consent to lower-tier subcontract is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (D) or (E) or this clause.
- D. If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that--
 - 1. Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 - 2. Is fixed-price and exceeds--
 - (i) For a subcontract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract; or
 - (ii) For subcontracts awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract.
- E. If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator's written consent before placing the following lower-tier subcontracts:

Lower tier subcontracts requiring written consent are identified in the subcontract schedule.

- F. 1. The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification thereof for which consent is required under paragraph (C), (D), or (E) of this clause, including the following information:
 - (i) A description of the supplies or services to be lower-tier subcontracted.
 - (ii) Identification of the type of lower-tier subcontract to be used.
 - (iii) Identification of the proposed lower-tier subcontractor.
 - (iv) The proposed lower-tier subcontract price.

- (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
- (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.
- (vii) A negotiation memorandum reflecting --
 - a. The principal elements of the lower-tier subcontract price negotiations;
 - b. The most significant considerations controlling establishment of initial or revised prices;
 - c. The reason cost or pricing data were or were not required;
 - d. The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - e. The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
 - f. The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - g. A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

2. The Subcontractor is not required to notify the NREL Subcontract Administrator in advance of entering into any lower-tier subcontract for which consent is not required under paragraph (C), (D), or (E) or this clause.

G. Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination --

- 1. Of the acceptability of any subcontract terms or conditions;
- 2. Of the allowability of any cost under this subcontract; or
- 3. To relieve the Subcontractor of any responsibility for performing this subcontract.

- H. No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- I. The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.
- J. NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- K. Paragraphs (D) and (F) of this clause do not apply to the following lower-tier subcontracts, which were evaluated during negotiations:

Lower tier subcontracts evaluated during negotiations are identified in the subcontract schedule.

CLAUSE 32 - SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)

Derived from FAR 52.244-6

(Applies to solicitations and subcontracts for supplies or services other than commercial items)

- (a) Definitions.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions. "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O.11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C.4212(a));

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C.793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C.1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

CLAUSE 33 - INSPECTION OF SERVICES--COST-REIMBURSEMENT (APR 1984)

Derived from FAR 52.246-5

- A. Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- B. The Subcontractor shall provide and maintain an inspection system acceptable to NREL covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to NREL/Government during subcontract performance and for as long afterwards as the subcontract requires.
- C. NREL/Government have 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 subcontract. Such inspections and tests shall be performed in a manner that will not unduly delay the work.
- D. If any of the services performed do not conform with subcontract requirements, NREL 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, NREL may--
 - 1. Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and
 - 2. Reduce any fee payable under the subcontract to reflect the reduced value of the services performed.
- E. If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with subcontract requirements, NREL may--
 - 1. By subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances ;or
 - 2. Terminate the subcontract for default.

**CLAUSE 34 - INSPECTION OF RESEARCH AND DEVELOPMENT
(SHORT FORM) (APR 1984)**

Derived from FAR 52.246-9

NREL/Government have the right to inspect and evaluate the work performed or being performed under the subcontract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If NREL/Government perform inspections or evaluations on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

CLAUSE 35 - PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

Derived from FAR 52.247-63 (FD)

- 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.

"United States," as used in this clause, means the fifty (50) States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- B. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government Contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- D. In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

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