

## Addendum #1 FWP # 7176603

May 24, 2018

1. Clarification:

Pre-bid conference meeting notes and attendees list are attached as part of this Addendum

2. Clarification:

Specification Section 01230 Paragraph 1.4: Additive Alternate # 1 may or may not be accepted by Owner, at Owner's sole discretion. However, Additive Alternate #1 cannot be accepted if one or more Deductive Alternates are accepted. If acceptance of Deductive Alternates is considered by the Owner, they must be taken in sequence starting with Deductive Alternate #1.

3. Clarification to Instruction to Bidders: at Paragraph 4.3.

This Project has Federal money and thus the Debarment Form is required and the form must be filled out and submitted **with the bid**.

Debarment form is attached to this Addendum.

4. Reference Drawing G3.0 Railing Dimming (right hand column):

In the first sentence in Paragraph 6, delete the word "wireless".

Delete last sentence in paragraph 7 beginning with "Because of the nonmetallic enclosure ...."

The dimming system does not use wireless technology.

5. Reference Specification Section 01100 Paragraph 1.4 C: At Section 01100, paragraph 1.4 C, is to be deleted in its entirety.

Therefore the Contractor is responsible for snow removal for the duration of the Project. There are no blackout work days in December.

6. Reference Specification Section 01100 Paragraph 1.5 B: Delete the words in the first sentence: "except for the days listed above."

7. Reference Specification Section 01100 Paragraph 1.8 C: Add to Paragraph C " With advance notice and approval by Owner, Contractor shall schedule construction activities for no more than 60 hours in any one week period. Additionally, the Contractor shall schedule construction activities for no more than 40 hours per week for more than two consecutive weeks".

8. At Section 01100, paragraph 1.8: Revise designation from 1.8, to read, "1.6"

9. Reference Specification Section 01500 Paragraph 1.7: At subparagraph F, add the following: " For access to the upper cavern entrance, an appropriately sized ATV type vehicle may be used between the top of the lower stairs to the bottom of the upper stairs leading up to the cavern entrance, ie the paved trail between the two sets of stairs. The ATV must carefully ascend the lower stairs without damaging the stairs. It is intended that the ATV would go up the bottom stairs once during the Project in order to reduce the possibility of damage to the stairs. If a ramp or other structure is created that protects the stairs from damage and is approved by the cavern Park Manager, the limit on ATV traversing the stair(s) is eliminated. In all cases, the Contractor is responsible for protecting the stairs from damage".

10. Reference Specification Section 01600 Paragraph 3.1: At Section 01600, Paragraph 3.1, A, delete the first sentence and replace with the following: "For substitutions requiring prior approval, all requests for substitution shall be submitted to the Engineer not later than 12:00 noon, May 29, 2018".

## Pre-Bid Meeting Notes FWP # 7176603

Meeting at Lewis and Clark Caverns started at 11:00 AM, May 22, 2018

Conducted by:

Jamie Mongoven PE (Project Manager), FWP

Rhea Armstrong, FWP L&C Park Manager

Terre Meinershagen, Architect

Michael Fussell PE, Project Engineer

Attachments: Meeting Attendees and Federal Debarment Form

1. Jamie began by discussing the various forms and requirements of FWP for this Project  
Bid opening is 11:00 AM, June 7, 2018

Bid Bonds are required

Retainage was discussed including the 1% Gross Receipt Tax

Pay Requests are once a month. Direct Deposit speeds up payment from the State to the Contractor

Snow removal for roads and access trails is the responsibility of the Contractor. FWP will take care of the candle light tours.

Construction can commence October 1, 2018. Final Completion is April 6, 2019.

Jamie indicated that the Project has Federal money and thus the Debarment Form must be filled out and submitted **with the bid**.

Jamie described the procedure regarding FWP selection of additive and deductive alternates.

There was a discussion regarding the cave specialist. It was emphasized that the cave specialist protects the cavern resources but also assists the Contractor in possible routing of wires and placement of light fixtures and other assistance to facilitate the Contractor's work. The cave specialist starts work October 1st.

A question was asked about the cave specialist being able to approve or disapprove the Contractor's work flow means and methods.

Answer: As described on drawing sheet G2.0 Item 5, the cave specialist has the duty to protect the cavern resource. If a Contractor's workflow will, in the opinion of the cave specialist, damage the cavern resource, the cave specialist will stop the specific work flow until the work flow procedure can be adjusted so as to protect the cavern resource

2. Rhea discussed the process required to protect the cavern resources. The 4 hour training requirement was discussed. A question was asked if more than one training session can be scheduled, or having a video of the first training session. This is for workers added to the Project after the initial training session.

General answer is that training at different times will be worked out by FWP.

3. Terre discussed the railing portion of the Project:

The Contractor may elect to make the measurements and other non construction activities such as submittals between September 1 and October 1. Visits to the cavern must be scheduled during this time with the cavern FWP staff. They need one week's notice of a cavern visit in order to schedule their availability They will be acting as the cave specialist for a Contractor visit. It is important that the **number** of visits to the cavern during the September 1 to October 1 period be limited. This means that the Contractor should consolidate the cavern visit to one or more consecutive days. (Note that tours are still being run during this period.)

No cutting in the cavern is allowed to install the railings.

Terre noted that the drawing dimensions are to be used for general quantities of material items that are required. The railing dimensions must be measured in the cavern by the manufacturer

approved person(s). The specifications indicate these requirements as well as installation by manufacturer's certified installers.

Terre discussed the passivation process for the stainless steel railing . He also discussed the process required to maintain the integrity of the passivation during the installation of the railings.

4. Mike discussed the lighting requirements:

Access to the few existing receptacles was discussed. It was noted that the dimming of railing lights and the tunnel wall mounted light fixture is accomplished by a dim chip device rather wireless dimming.

Mike briefly described the demolition of existing electrical systems and using the cave specialist to assist in demolition decisions as not all existing wiring can be demolished without harming the cavern resources.

Mike warned that the existing (original) electrical system uses a two wire grounded neutral for the 120 volt supply.

The LED drivers for the replacement lighting in the existing railings are located in a separate enclosure - not in the railing post. This was highlighted in the Paradise room during the walk through.

5. The floor was opened up to discussions and questions.

A question was asked: Do the regulations regarding working in a mine apply to this Project.

Answer is no.

A question was asked regarding some distances of paths. This information is on Drawing G1.0.

A question was asked regarding the details of removing the existing railing posts from the existing concrete.

6. The pre-bid meeting was adjourned at 11:50 AM for Lunch. It was reconvened at 12:20 PM at the Cave Visitor Parking lot. The walk through the cavern took 2 hours. The path up to the entrance to the cavern was discussed with respect to moving material as well as snow removal.

During the walk through the cavern, the railing installation and electrical work were described in general ways to assist the Contractors in understanding the scope of work required. Also mentioned were areas of where material could be stored inside the cavern.

Outside at the exit, the area where ATV could turn around and where porta-potties could be located was discussed.

A question was asked regarding whether one can lower equipment from the top of the pit down to the pit bottom area and thus bypass the Beaver Slide. The general answer would require the Contractor to propose the method of how this would be done in a manner that is both safe for the workers and does not damage the cavern resources including cavern formations.

If there any corrections or additions, please email them to Michael Fussell at [fus@aol.com](mailto:fus@aol.com) by May 26, 2018. Otherwise, these meeting notes stand as authoritative.

PROJECT NAME LEWIS & CLARK CAVERNS  
 PREBID LOCATION LEWIS & CLARK CAVERNS  
 CONDUCTED BY MICHAEL FUSSELL

PROJECT NUMBER FWP # 7176603  
 PREBID DATE 5/22/18

NAME	REPRESENTING	MAILING ADDRESS	PHONE	EMAIL
MICHAEL FUSSELL	FUSSELL ENR	2435 DIXON MISSOULA 59801	721-6996	Fus@aol.com
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Tyler Shaffer	Trademark Electric	700 Denoy Blvd Butte, MT 59701	782-6698	info@trademarkelectricinc.com
BOB BENTLEY	BENTLEY CONSTRUCTION	PO Box 3646 Butte MT 59702	494-4501	info@bentleyconst.com
Anthony Sciolino	Archeenergy	415 Ploss flats 12d UNIT B Belgrade MT 59714	406-599 0539	anthony@ archenergy1.com
Billy DeBuse	Northrup Rockies	246 Timberline Drive Bozeman MT 59718	406 589 0513	william@nrarlp.com
SARAH MICHAELSON	PAULIK ELECTRIC	P.O. Box 17107 Missoula, MT 59808	406-543-8783	smm@gwestoffice.net
DOUGLAS J. BREKER	TOWNSEND ELECTRIC	PO BOX 401 TOWNSEND, MT 59644	266-5279	te@townsendelectric.com

PROJECT NAME \_\_\_\_\_  
 PREBID LOCATION \_\_\_\_\_  
 CONDUCTED BY \_\_\_\_\_

PROJECT NUMBER \_\_\_\_\_  
 PREBID DATE \_\_\_\_\_

NAME	REPRESENTING	MAILING ADDRESS	PHONE	EMAIL
Jamie Giles	Rob Giles Elect	Kalispell, MT 59901 2526 US HWY 2 West	406-755-4953	jammie@robgileselectric.
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Robert Cok	Armitage Electric	5555 Gough Hill Rd Bozeman, MT 59718	406-595-0934	robert@armitageelectric.com
Anthony Sciolino	Absaroka Builders	415 Flang Flats Rd Unit A Belgrade MT 59714	406-223 4463	erik@absarokabuilders.com



**THIS DEBARMENT FORM MUST BE SIGNED AND SUBMITTED ALONG WITH THE BID PROPOSAL.**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

Project Name: Lewis & Clark Caverns State Park Railing & Lighting Upgrades  
Location: near Three Forks, MT  
FWP #: 7176603

**TO: DEPARTMENT OF FISH, WILDLIFE & PARKS  
DESIGN & CONSTRUCTION  
1522 NINTH AVENUE; P.O. BOX 200701  
HELENA, MT 59620-0701**

Government requirements for non-procurement suspension and debarment are contained in the OBM guidance in 2 CFR part 180, which implements Executive Orders 12549 and 12689, Debarment and Suspension. This certification is required by those regulations since the total contract award is expected to equal or exceed \$25,000.

By submission of this certification, the individual or firm who is awarded this contract certifies that neither the individual or firm and its principals nor their subcontractors and their principals: (1) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by any federal department or agency; (2) have within a 3-year period preceding any partially or wholly federally funded contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in (2) above; and, (3) have within a 3-year period preceding an award of any partially or wholly federally funded contract, had one or more contracts terminated for cause or default by any federal or state agency.

\_\_\_\_\_  
Company

Name and Title of Authorized Representative

\_\_\_\_\_  
Signature Date

## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower-tier participant is providing the certification.
2. The certifications in this clause are a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the offices to which this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower-tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the offices to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower-tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower-tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transaction,” without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## **1. ARTICLE 16 – FEDERAL CONTRACT REQUIREMENTS**

### **1.1. Federal Prevailing Wage and Other Requirements - Davis-Bacon, Payrolls, and Basic Records.**

**1.1.1.** In all construction contracts (including subcontracts) in excess of \$2,000 the Contractor and all Subcontractors shall be subject to the federal Davis-Bacon Act (40 USC 276) as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5).

**1.1.2.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(a)(3) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under paragraph 1a(7) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1a(3) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainees programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

**1.1.3.** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Owner. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information should be submitted on Form WH-347. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

**1.1.4.** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor, or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1.1.4.1. that the payroll for the payroll period contains the information required to be maintained under paragraph a of this clause and that such information is correct and complete;

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

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

**1.1.5.** The weekly submission of a properly executed certification set forth on the reverse side of form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance".



**1.1.6.** The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**1.1.7.** The Contractor or subcontractor shall make the records required under paragraph a of this clause available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**1.1.8.** Withholdings. The Contracting Officer shall, upon his or her own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Davis-Bacon Act prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payment or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United State Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**1.1.9.** Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees " "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Acts Requirements," and "Certification of Eligibility," and such other clauses as the Contracting Officer may be appropriate instructions require and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the contract clauses cited above.

**1.1.10.** Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**1.1.11.** Contract Work Hours and Safety Standards Act – Overtime Compensation – General. This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor:

**1.1.12.** Overtime requirements. A Contractor or subcontractor shall not require or permit any laborer or mechanic to work in excess of 8 hours in any calendar day, or 40 hours in any workweek, on any part of the contract work subject to the Act; unless, the laborer or

mechanic receives compensation at a rate not less than 1.5 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day, or 40 hours in any workweek, whichever produces the greater amount of overtime.

**1.1.13.** Violation, liability for unpaid wages, and liquidated damages. If the terms above are violated, the Contractor and any subcontractor responsible for the violation shall be liable to any affected employee for unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. These damages are computed for each individual laborer or mechanic at \$10 for each calendar day on which the employee was required or permitted to be employed in violation of the above.

**1.1.14.** Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such amounts as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided above.

**1.1.15.** Section 107 of the Contract Work and Safety Standards Act is applicable to all activities under this Contract.

**1.1.16.** Subcontracts. The Contractor and subcontractor shall insert paragraphs i. through iv. of this clause in all subcontracts.

**1.1.17.** Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). These records shall be preserved for 3 years from contract completion. The contractor will make the records available for inspection by authorized representatives of the Federal and State governments and will permit such representatives to interview employees during working hours on the job.

**1.1.18.** Maintenance Of Records. Contractor shall maintain all records for 3 years after the State makes final payment and all other pending matters closed.

**1.1.19.** Apprentices And Trainees.

1.1.19.1. Apprentices. Apprentices will be permitted to work at less than the predetermined rates for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (when appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. When a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or

subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid for the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

1.1.19.2. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination, unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. On the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

**1.2. EQUAL OPPORTUNITY.** If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with the subparagraphs below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause. During performing this contract, the Contractor agrees as follows:

**1.2.1.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

**1.2.2.** The Contractor 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.

**1.2.3.** The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain the clause.

**1.2.4.** The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

**1.2.5.** The Contractor shall send, to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause and post copies of the notice in conspicuous places available to employees and applicants for employment.

**1.2.6.** The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

**1.2.7.** The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 12 months preceding the date of award.

**1.2.8.** The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

**1.2.9.** If the OFCCP determines that the Contractor 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 Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

**1.2.10.** The Contractor shall include the terms and conditions of subparagraph b.(1) through (11) of this clause in every 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 subcontractor or vendor.

**1.2.11.** The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**1.2.12.** Executive Order 11246 as Amended by Executive Order 11375. Compliance with executive order 11246, entitled "Equal Employment Opportunity," as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60). During the performance of this contract the Contractor agrees as follows:

1.2.12.1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

1.2.12.2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

1.2.12.3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, the Notice regarding "Affirmative Action to Ensure Equal Employment Opportunity", advising the labor union or workers' representative of the Contractor's commitments under Section 202, of Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1.2.12.4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and of the rules, regulations, and relevant orders of the Secretary of Labor.

1.2.12.5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**1.2.13.** The Secretary of Labor may direct that any bidder or prospective contractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

**1.2.14.** In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) and such remedies invoked as provided in Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) or by rules, regulations, or by order of the Secretary of Labor, or as otherwise provided by law.

**1.2.15.** The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1985, as amended by Executive Order No. 11375 supplemented by Department of Labor regulations (41 CFR Chapter 60) so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency. The contractor may request the United States to enter into such litigation to protect the interest of the United States.

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

### **1.3. Clean Air and Water.**

**1.3.1.** "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

**1.3.2.** "Clean air standards," as used in this clause, means:

1.3.2.1. Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738; or,

1.3.2.2. An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d)); or,

1.3.2.3. An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or,

1.3.2.4. An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)). "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

**1.3.3.** "Compliance," as used in this clause, means:

1.3.3.1. compliance with Clean air or water standards; or

1.3.3.2. A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

**1.3.4.** A Facility, as used in this clause, means:

1.3.4.1. Any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designer, of the Environmental Protection Agency, determines that independent facilities are collected in one geographical area.

**1.3.5.** "Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

**1.3.6. The Contractor agrees:**

1.3.6.1. To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract; and,

1.3.6.2. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing; and,

1.3.6.3. To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and,

1.3.6.4. To insert the substance of this clause into any nonexempt subcontract.

**1.4. Non-Segregation.** By the submission of this bid, the Contractor agrees to the following:

**1.4.1.** "By submission of my bid for this project, I certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any locations, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the equal opportunity clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise. I further agree that I will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause, that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors."

**1.5. Copeland Anti-Kickback Act (18 U.S.C. 874).** This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation to which he is otherwise entitled. Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

**1.6. Rights to Inventions Made Under a Contract or Agreement (37 CFR 401).**

**1.6.1. Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.**

1.6.1.1. The contractor will disclose each subject invention to the appropriate Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the

extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

1.6.1.2. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the appropriate Federal agency within two years of disclosure to the appropriate Federal agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

1.6.1.3. The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

1.6.1.4. Requests for extension of the time for disclosure, election, and filing under the above subparagraphs may, at the discretion of the agency, be granted.

**1.6.2. Conditions When the Government May Obtain Title.** The contractor will convey to the Federal agency, upon written request, title to any subject invention.

1.6.2.1. If the contractor fails to disclose or elect title to the subject invention within the times specified, or elects not to retain title; provided that the agency may only request title within 60 days after learning of the failure of the contractor to disclose or elect within the specified times.

1.6.2.2. In those countries in which the contractor fails to file patent applications within the times specified; provided, however, that if the contractor has filed a patent application in a country after the times specified, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

1.6.2.3. In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

**1.6.3. Minimum Rights to Contractor and Protection of the Contractor Right to File**

1.6.3.1. The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.



1.6.3.2. The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

1.6.3.3. Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

#### **1.6.4. Contractor Action to Protect the Government's Interest**

1.6.4.1. The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested herein above and to enable the government to obtain patent protection throughout the world in that subject invention.

1.6.4.2. The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions herein above, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required herein above. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

1.6.4.3. The contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

1.6.4.4. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

#### **1.6.5. Subcontracts**

1.6.5.1. The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be

performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

1.6.5.2. The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required.

1.6.5.3. In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under this clause.

**1.6.6. Reporting on Utilization of Subject Inventions.** The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

**1.6.7. Preference for United States Industry.** Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**1.6.8. March-in Rights.** The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

1.6.8.1. Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

1.6.8.2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

1.6.8.3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

1.6.8.4. Such action is necessary because the agreement required by this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**1.7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).**

**1.7.1.** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification to the State and shall collect all certifications from all subcontractors as required by this paragraph.

**1.7.2.** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**1.7.3. Certification.** The certification shall contain the following language and signature:

1.7.3.1. The undersigned certifies, to the best of his or her knowledge and belief, that:

1.7.3.1.1. (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

1.7.3.1.2. (2) If any funds other than Federal appropriated funds 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and,

1.7.3.1.3. (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

1.7.3.2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure. The undersigned states, to the best of his or her knowledge and belief, that:

1.7.3.2.1. If any funds 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 this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

1.7.3.2.2. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$11,000 and not more than \$110,000 for each such failure.

## **1.8. Debarment and Suspension (E.O.s 12549 and 12689).**

**1.8.1.** In accordance with Public Law 103-355, Section 2455 ([31 U.S.C. 6101](#), note), and Executive Order 12689, any debarment, suspension or other Government-wide exclusion initiated under the Non-procurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, shall be recognized by and effective as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Government-wide exclusion initiated on or after August 25, 1995, under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Non-procurement Common Rule.

**1.8.2.** Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors. Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

1.8.2.1. Contractors included in the EPLS as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

1.8.2.2. Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties.

1.8.2.3. After the opening of bids or receipt of proposals, the contracting officer shall review the EPLS.

1.8.2.3.1. Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected.

1.8.2.3.2. Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

1.8.2.3.3. Immediately prior to award, the contracting officer shall again review the EPLS to ensure that no award is made to a listed contractor.

**1.8.3. Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.**

1.8.3.1. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor or Subcontractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

1.8.3.2. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

1.8.3.3. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice must include the following:

1.8.3.3.1. The name of the subcontractor.

1.8.3.3.2. The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

1.8.3.3.3. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

1.8.3.3.4. The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

[END OF GENERAL CONDITIONS]