

# **PART I**

## **SECTION H**

### **SPECIAL CONTRACT REQUIREMENTS**

**PART I**  
**SECTION H**  
**SPECIAL CONTRACT REQUIREMENTS**

**TABLE OF CONTENTS**

H.1	No Third Party Beneficiaries .....	1
H.2	Workforce Transition .....	1
H.3	Employee Compensation: Pay and Benefits .....	1
H.4	Post Contract Responsibilities for Pension and Other Benefit Programs.....	7
H.5	Labor Relations.....	7
H.6	Environment, Safety, and Health Stop Work Order .....	8
H.7	Costs Associated With Whistleblower Action .....	8
H.8	Separate Corporate Entity and Performance Guarantee.....	10
H.9	Responsible Corporate Official.....	10
H.10	Alternative Disputes Resolution.....	10
H.11	Allocation of Responsibility and Liability for Contractor and U.S. Department of Energy (DOE) Environmental Compliance Activities.....	11
H.12	Long-Range Planning, Program Development and Budgetary Administration.....	12
H.13	Standards Of Contractor Performance Evaluation.....	12
H.14	Strengthening Federal Environmental, Energy, and Transportation Management, Executive Order 13423.....	14
H.15	Cost Recovery.....	14
H.16	Lobbying Restriction (Energy And Water Act) (2007) .....	14
H.17	Conditional Payment Of Fee Process .....	15
H.18	Application of DOE Contractor Requirements Documents .....	15
H.19	Service Contract Act Of 1965 (41 U.S.C. 351).....	16
H.20	Walsh-Healy Public Contracts Act.....	16

H.21	Additional Labor Requirements .....	17
H.22	Electronic Subcontracting Reporting System.....	17
H.23	Compliance with Internet Protocol Version 6 (IPv6) in Acquiring Information Technology .....	17
H.24	Activities During Contract Transition (Special).....	17
H.25	Special Financial Institution Account Agreement.....	19
H.26	Organizational Conflicts Of Interest, Management Plan and Implementation Program ...	20
H.27	Counterintelligence Implementation .....	20
H.28	Employee Concerns Program.....	20
H.29	DEAR 952.219-70 DOE Mentor-Protégé Program (MAY 2000) .....	20
H.30	Incurrence of relocation Costs Prior to Initiation of M&O Activities .....	20
H.31	Exemption of Management and Operation Contractual Obligations for Real Property Encumbered by Government's Easement Outgrant.....	21
H.32	Privately Funded Technology Transfer Program.....	22
H.33	Provisional Payment of Fee.....	22
H.34	Temporary Laboratory Closures at NREL.....	22
H.35	Special Provisions Relating to Work Funded Under American Recovery and Reinvestment Act of 2009 (Feb 2009) .....	22

## PART I

### SECTION H

#### SPECIAL CONTRACT REQUIREMENTS

##### H.1 No Third Party Beneficiaries

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating or conferring any right of action or any other right or benefit upon past, present or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

##### H.2 Workforce Transition

- (a) *Hiring Preference* – Subject to the availability of funds, the Contractor shall offer employment to all Incumbent Employees as defined in paragraph H.3 (e) who, as of the date of Contract award, are in good standing and who **are** Regular Employees and are engaged in performance of work within the scope of work under this Contract. Individuals who are Regular Employees are individuals who are employed for an indefinite duration, with either a full-time work schedule of at least 40 hours per week, or a part-time work schedule of fewer than 40 hours per week, but more than 20 hours per week.
- (b) *Discretionary Incumbent Management Employees Excepted* – It is the Contractor's prerogative to establish its own management structure. Therefore, the hiring preference set forth in paragraph H.2 (a) above is not applicable to Discretionary Incumbent Management Employees. Discretionary Incumbent Management Employees are individuals permanently assigned to the positions listed under Section L, Enclosure E. The Contractor may offer employment to said employees, in either their current positions or other positions, at the Contractor's sole discretion.
  - (1) For those positions listed in Section L, Enclosure E any changes in job positions or classifications shall be accompanied by a commensurate alteration in compensation.
  - (2) Nothing in this paragraph shall preclude the Contractor from separating employees when in its judgment it is appropriate to do so based on the employee's performance or conduct.

##### H.3 Employee Compensation: Pay and Benefits

- (a) *Human Resources Compensation Plan* - The Contractor shall submit by September 30, 2008, a Human Resources Compensation Plan demonstrating how the Contractor will comply with the requirements of this Contract. The *Human Resources Compensation Plan* shall describe the Contractor's policies regarding compensation, pensions -and other benefits, and how these policies will support at

reasonable cost the effective recruitment and retention of a highly skilled, motivated, and experienced workforce.

- (b) *Total Compensation System* - The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system including a compensation system Self-Assessment Plan consistent with FAR 31.205-6 and DEAR 97.3102-05-6, *Compensation for Personal Services (Total Compensation System)*. DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor's Total Compensation System shall meet the tests of allowability established by and in accordance with FAR 31.205-6 and DEAR 97.3102-05-6, be fully documented, consistently applied, and acceptable to the Contracting Officer. Costs incurred in implementing the Total Compensation System shall be consistent with the Contractor's documented *Human Resources Compensation Plan* as approved by the Contracting Officer.
- (c) *Appraisals of Contractor Performance* - DOE will conduct periodic appraisals of Contractor performance with respect to Total Compensation System implementation. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review
- (d) *Reports and Information* - The Contractor shall provide the Contracting Officer with the following reports and information with respect to pay and benefits provided under this Contract:
  - (1) An Annual Contractor Salary-Wage Increase Expenditure Report to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.
  - (2) A list of the top five most highly compensated executives as defined in FAR 31.205-6(p) (2) (ii) and their total cash compensation at the time of Contract award, and at the time of any subsequent change to their total cash compensation
  - (3) An Annual Report of Contractor Expenditures for Employee Supplemental Compensation through the Department Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of each year.
  - (4) A performance self-assessment of the Total Compensation System implementation and results to include an evaluation of total benefits using the Employee Benefits Value Study and the Employee Benefits Cost Survey Comparison Analysis described in paragraph (f) below.
- (e) *Pay and Benefit Programs* - The Contractor shall establish pay and benefit programs for Incumbent Employees and Non-Incumbent Employees as defined in paragraphs (1) and (2) below; provided, however, that employees scheduled to work fewer than 20 hours per week receive only those benefits required by law. Employees are eligible for benefits, subject to the terms, conditions, and limitations of each benefit program.
  - (1) Incumbent Employees are the employees who are Regular Employees of the National Renewable Energy Laboratory Division of Midwest Research Institute as of September 30, 2008.

- (i) *Pay* - Subject to Section H.2 above, the Contractor shall provide equivalent pay to Incumbent Employees as compared to pay provided by Midwest Research Institute for at least the first year of the term of the Contract
  - (ii) *Pension and Other Benefits* - The Contractor shall provide a total package of benefits to Incumbent Employees comparable to that provided by Midwest Research Institute. Comparability of the total benefit package shall be determined by the Contracting Officer in his/her sole discretion.
  - (iii) Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law. DOE shall remain the sponsor of NREL's existing pension plan and Contractor shall continue to perform, or have performed on its behalf, those functions previously performed by either Midwest Research Institute ("MRI") or the National Renewable Energy Laboratory Division of MRI. The Contractor shall become a sponsor of the other benefit plans (or comparable successor plans); including other post-retirement benefit (PRB) plans, as applicable, for Incumbent Employees and retired plan participants, with responsibility for management and administration of the plans subject to sub-subparagraphs (iv) and (v) below. The Contractor shall be responsible for maintaining the qualified status of those plans. The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance, including service credits and leave balances for those MRI employees previously assigned to NREL and who become Contractor employees as of October 1, 2008.
  - (iv) Contractor and MRI shall determine all assets and liabilities associated with the MRI and NREL Division pension plans, effective as of Midnight, September 30, 2008 for all Incumbent Employees and MRI employees; such determination shall be based on whether said employees become an employee of Contractor or become, or remain, an employee of MRI, whether assigned to NREL or not, effective as of October 1, 2008. This Determination shall be calculated as soon as practicable, after October 1, 2008, and the result shall be communicated to the Contracting Officer for approval. The Parties agree to work together in good faith to resolve any issues associated with this Determination so that Contracting Officer approval can be obtained in sufficient time to allow Contractor and MRI to transfer the necessary assets, by January 31, 2009 (or such later date established in writing by the Contracting Officer), associated with post-retirement liabilities being assumed by each of them based on whether or not the individuals involved become Contractor employees or remain or become MRI employees.
  - (v) Contractor's management and administration responsibilities for its post-retirement pension and other benefit plans shall be performed on a bifurcated basis, with Alliance remaining directly responsible for exercising its management and fiduciary responsibilities for these plans and day-to-day management and administration responsibilities being provided by MRI to Contractor under an Administrative Work Authorization approved by the Contracting Officer.
- (2) Non-Incumbent Employees are new hires, i.e., employees other than Incumbent Employees who are hired by the Contractor after September 30, 2008. All Non-Incumbent Employees shall receive a total pay and benefits package that

provides for market based retirement and medical benefit plans that are competitive with the industry from which the Contractor recruits its employees and in accordance with Contract requirements.

(3) Cash Compensation

- (i) The Contractor shall submit the following to the Contracting Officer for a determination of cost allowability for reimbursement under the Contract:
  - (A) Any additional compensation system self-assessment data requested by the Contracting Officer that may be needed to validate and approve the total compensation system.
  - (B) Any proposed major compensation program design changes prior to implementation.
  - (C) An Annual Compensation Increase Plan.
  - (D) Individual compensation actions for the Key Personnel, including initial and proposed changes to base salary and/or payments under an Executive Incentive Compensation Plan
  - (E) Any proposed establishment of an incentive compensation plan (variable pay plan/pay-at-risk).
- (ii) The Contracting Officer's approval of individual compensation actions will be required only for the Laboratory Director and those other first- tier reports to the aforementioned position, as identified by the Contracting Officer.
- (iii) Severance Pay is not payable to an employee under this Contract if the employee:
  - (A) Voluntarily separates, resigns or retires from employment;
  - (B) Is offered employment with a successor/replacement contractor; .
  - (C) Is offered employment with a parent or affiliated company; or
  - (D) Is discharged for cause.
- (iv) Service Credit for purposes of determining severance pay does not include any period of prior service for which severance pay has been previously paid through a DOE cost-reimbursement contract.

(f) *Pension and Other Benefit Programs*

- (1) No presumption of allowability will exist when the Contractor implements a new benefit plan or makes changes to existing benefit plans for either Incumbent Employees or Non-Incumbent Employees until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed benefit plans.
- (2) Cost reimbursement for Incumbent Employee and Non-Incumbent Employee pension and other benefit programs sponsored by the Contractor will be based on the Contracting Officer's approval of Contractor actions pursuant to an

approved *Employee Benefits Value Study* and an *Employee Benefits Cost Survey Comparison* as described below.

- (3) Unless otherwise stated, or as directed by the Contracting Officer, the Contractor shall submit the studies required in paragraphs (i) and (ii) below. The studies shall be used by the Contractor as part of its performance self assessment described in paragraph (d) (4) above and in calculating the cost of benefits under existing benefit plans. In addition, the Contractor shall submit updated studies to the Contracting Officer for approval prior to the adoption of any change to a pension or other benefit plan.
  - (i) An *Employee Benefits Value Study* (Ben-Val), every two years each for Incumbent and Non-Incumbent Employees benefits, which is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to Incumbent and Non-Incumbent Employees measured against the RV of benefit programs offered by comparator companies approved by the Contracting Officer. To the extent that the value studies do not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources; and
  - (ii) An *Employee Benefits Cost Study Comparison*, annually each for Incumbent and Non-Incumbent Employees that analyzes the Contractor's employee benefits cost for Incumbent and Non-Incumbent Employees on a per capita basis per full time equivalent employee and as a percent of payroll and compares it with the cost reported by the U.S. Chamber of Commerce Annual Employee Benefits Cost Surveyor other Contracting Officer approved broad based national survey.
- (4) When the net benefit value exceeds the comparator group by more than five percent, the Contractor shall submit a corrective action plan to the Contracting Officer.
- (5) When the average total benefit per capita cost or total benefit cost as a percent of payroll exceeds the comparator group by more than five percent, when and if required by the Contracting Officer, the Contractor shall submit an analysis of the specific plan costs that are above the per capita cost range or total benefit cost as a percent of payroll and a corrective action plan to achieve conformance with a Contracting Officer directed per capita cost range or total benefit cost as a percent of payroll.
- (6) Within two years of Contracting Officer approval of the Contractor's corrective action plan, the Contractor shall align employee benefit programs with the benefit value and per capita cost range as approved by the Contracting Officer
- (7) The Contractor shall submit the Report of Contractor Expenditures for Supplementary Compensation for the previous calendar year via the DOE Workforce Information System (WFIS) Compensation and Benefits Module no later than March 1 of the current calendar year.
- (8) The Contractor may not terminate any benefit plan during the term of the Contract without the prior approval of the Contracting Officer in writing.



- (9) Cost reimbursement for PRBs if any is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service 5 years under a DOE cost reimbursement contract(s) immediately prior to retirement. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (g) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs
- ..
- (1) For cost allocability and reimbursement purposes, any defined benefit (DB) or defined contribution (DC) pension plans established and/or implemented by the Contractor shall be maintained consistent with the requirements of the IRC and ERISA.
  - (2) Contractor policies, practices, and procedures used in the administration of pension plans shall be consistent with applicable laws and regulations.
  - (3) Except as provided in sub-subparagraph (e)(1)(iii) above, employees working for the Contractor shall only accrue credit for service under this Contract after October 1, 2008
  - (4) The pension plan, sponsored by DOE and maintained by the Contractor, consistent with sub-subparagraph (e)(1)(v) above, for which DOE reimburses costs, shall be maintained as a separate pension plan distinct from any other pension plan which provides credit for service not performed under a DOE cost-reimbursement contract.
  - (5) For each pension plan or portion of a pension plan for which DOE reimburses costs, the Contractor shall provide the Contracting Officer with the following information within nine months of the last day of the current pension plan year:
    - (i) Copies of IRS forms 5500 with schedules; and
    - (ii) Copies of all forms in the 5300 series that document the establishment, amendment, termination, spin-off, or merger of a plan.
  - (6) Prior to the adoption of any changes to its pension plan, the Contractor shall submit the information required below, as applicable, to the Contracting Officer for approval or disapproval and a determination as to whether the costs to be incurred are consistent with the Contractor's documented Human Resources Compensation. Plan and are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-05-6.
    - (i) For proposed changes to pension plans and pension plan funding, an analysis of the impact of any proposed changes on actuarial accrued liabilities and an analysis of relative benefit value; and,
    - (ii) The Contractor shall obtain the advance written approval of the Contracting Officer for any non-statutory pension plan changes that may increase costs or liabilities, and any proposed special programs (including, but not limited to, plan-loan features, employee contribution refunds, or ancillary benefits) and shall provide DOE with an analysis of the impact of special programs on the actuarial accrued liabilities of the pension plan, and on relative benefit value, if applicable.

- (iii) The Contractor shall not terminate any pension plan without at least 60 days notice to and the approval of the Contracting Officer prior to the scheduled date of plan termination.

#### **H.4 Post Contract Responsibilities for Pension and Other Benefit Programs**

- (a) If this Contract expires or terminates and DOE has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service at the National Renewable Energy Laboratory (collectively, the "Plans"), the Contractor shall cooperate with both DOE (to the extent DOE retains sponsorship of the pension plan) and the new contractor in order to transfer to the new contractor its responsibility for sponsorship (excluding the pension plan), management and administration of the Plans consistent with direction from the Contracting Officer.
- (b) If this Contract expires or terminates and DOE has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion.
  - (1) Subject to subparagraph (2) below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements. Notwithstanding the foregoing, Contractor has no responsibility to sponsor the pension plan since DOE is the sponsor of said plan.
  - (2) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship (excluding the pension plan), management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship (excluding the pension plan), management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, (excluding the pension plan) in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs (including those benefit administration costs incurred on its behalf by MRI) will be reimbursed pursuant to applicable Contract provisions.

#### **H.5 Labor Relations**

- (a) The Contractor shall respect the right of employees to organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective

bargaining or other mutual aid or protection, and to refrain from any or all of these activities.

- (b) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives prior to negotiations of any collective bargaining agreement or revision thereto and shall consult with and obtain the approval of the Contracting Officer regarding appropriate economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before proposing or agreeing to changes in any pension or other benefit plans.
- (c) The Contractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR, Subpart 22.1 and DEAR, Subpart 970.2201 and all applicable Federal and State Labor Relations laws.
- (d) The Contractor will notify the Contracting Officer or designee in a timely fashion of all labor relations issues and matters of local interest including organizing initiatives, unfair labor practice, work stoppages, picketing, labor arbitrations, and settlement agreements and will furnish such additional information as may be required from time to time by the Contracting Officer.

## **H.6 Environment, Safety, and Health Stop Work Order**

- (a) Notwithstanding the Clause I.103, *Technical Direction* and Clause F.3, *FAR 52.242-15 Stop-Work Order (Alternate 1)*, and in addition to the Contracting Officer's stop-work authority in Clause I.119, *Integration of Environment, Safety, and Health into Work Planning and Execution* paragraph (g), Contracting Officer Representatives (CORs) are authorized to issue a Stop-Work Order when, in the judgment of the COR, a clear and present danger exists to the workers, environment or members of the public. Clear and present danger is a condition or hazard which could cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures.
- (b) ES&H Stop-Work Orders under this clause may be initiated verbally by CORs. The Contractor is obligated to immediately comply with the COR verbal and/or written direction to Stop Work under this paragraph. Any verbal direction to the Contractor shall be followed in writing from the COR initiating the Stop-Work Order through the Contracting Officer as soon as reasonably possible. Work may not be restarted by the Contractor without written approval from the Contracting Officer.
- (c) The Contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

## **H.7 Costs Associated With Whistleblower Action**

(a) Costs Associated with Whistleblower Actions

(1) Definitions for purposes of this paragraph:

Covered contractors and subcontractors mean those contractors and subcontractors with contracts exceeding \$5,000,000.

Employee Whistleblower action means an action filed by an employee in federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR Subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239

Retaliatory act means a discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

Settlement and award costs mean defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

(2) For costs associated with employees whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the Contracting Officer:

- (i) May authorize reimbursement of costs on a provisional basis, in appropriate cases;
- (ii) Must consult with the Office of General Counsel, whistleblower cost point of contact, who will consult with other Headquarters points of contact as appropriate, before making a final allowability determination; and
- (iii) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

## H.8 Separate Corporate Entity and Performance Guarantee

- (a) The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent organization(s). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.
- (b) The Contractor's parent organizations shall guarantee the Contractor's performance as evidenced by the Performance Guarantee(s) incorporated in the contract in Section J, Attachment H. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parents shall assume joint and severable liability for the performance of the contract.
- (c) In the event any of the signatories to the performance guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

## H.9 Responsible Corporate Official

Notwithstanding the provisions of clause H.8, *Separate Corporate Entity and Performance Guarantee*, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the Contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: James L. Spigarelli, Ph.D.  
(Offeror Complete)

Position: Chair, Board of Directors

Company: Alliance for Sustainable Energy, LLC

Address: 14142 Denver West Parkway  
Denver West Building NO. 51, Suite 335  
Lakewood, CO 80401

## H.10 Alternative Disputes Resolution

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the Contracting Officer's level, without litigation. Both parties hereby agree to explore all reasonable avenues for a negotiated settlement in order to avoid disputes. When all possibilities for negotiation have failed, the parties will endeavor to move the potential dispute to Alternative Dispute Resolution (ADR). Either party is required to provide a written explanation to the other party for rejecting a request for ADR proceedings, citing the specific reasons that ADR procedures are inappropriate for resolution of the dispute. If the parties are unable to satisfactorily resolve the dispute using ADR or cannot agree on its application, they resume the formal process authorized in Section I.67, *Disputes*.

## **H.11 Allocation Of Responsibility And Liability For Contractor And U.S. Department Of Energy (Doe) Environmental Compliance Activities**

In this Clause:

“Environmental ” requirements means requirements imposed by applicable Federal, state, and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders, or compliance agreements, consent orders, permits, and licenses; and

“Party” means either the Contractor or DOE.

Responsibility and liability for fines or penalties arising from or related to violations of environmental requirements shall be borne by the party causing the violation regardless of which party:

The cognizant regulatory authority fines or penalizes;

Signs permit applications (including situations where DOE signs defective or non-conforming permit applications or other environmental submittals prepared by or under the direction of the Contractor), manifests, reports, or other required documents;

Is a permittee; or

Is the named subject of an enforcement action or assessment of a fine or penalty.

Consequently, if the Contractor causes a violation:

All fines and penalties arising from or related to violations of environmental requirements are unallowable costs. If DOE pays a fine or penalty for a violation that the Contractor caused, the amount of the fine or penalty shall be due from the Contractor, and DOE may immediately offset that amount against payments to which the Contractor is otherwise entitled for allowable costs and fee, or any other funds otherwise owed by the Government to the Contractor; and

In accordance with subsection (e) of the Section I Clause entitled, *DEAR 952.231-71, Insurance-Litigation and Claims*, costs of challenging or defending actions brought against the Contractor for violations of environmental requirements are specifically disallowed. However, if the Contracting Officer provides prior written authorization to challenge or defend against the action, the Contractor shall proceed in accordance with *DEAR 952.231-71, Insurance-Litigation and Claims*. If the Contractor proceeds with the action without the prior written authorization of the Contracting Officer, the costs of the challenge or defense may be allowable if there is no settlement, conviction, or finding of liability.

## **H.12 Long-Range Planning, Program Development and Budgetary Administration**

- (a) *Basic considerations* – Throughout the process of planning, and budget development and approval, the Parties recognize the desirability for close consultation, for advising each other of plans or developments on which subsequent action will be required, and for attempting to reach mutual understanding in advance of the time that action needs to be taken.
- (b) *Strategic planning* – The Contractor shall develop a Five-Year Strategic Plan (FYSP) which will be updated annually. Development of the FYSP is a component of the strategic planning process by which the Parties, through mutual consultation, reach agreement on the general types and levels of activity which will be conducted at the Laboratory for the period covered by the plan. The NREL FYSP, approved by the Contracting Officer, provides guidance to the Contractor for long-range planning of Laboratory programs, site and facility development, and for budget preparation. It also serves as a baseline for placement of work at the Laboratory.
- (c) *DOE approval* – DOE approval of the program proposals and budget estimates will be reflected in work authorizations and financial plans developed and issued to the Contractor.

## **H.13 Standards of Contractor Performance Evaluation**

- (a) Use of objective standards of performance, self assessment and performance evaluation:
  - (1) The Parties agree that the Contractor will use a comprehensive performance-based management approach for overall Laboratory management. The performance-based management approach will include the use of performance goals, and objective and subjective performance objectives, measures, and targets approved in advance of each performance evaluation period, as standards against which the Contractor's overall performance of the research, development, demonstration and deployment mission obligations under this Contract will be assessed. All performance measures and planned performance targets will be linked to the Five-Year Strategic Plan and other controlling documents. The performance goals, objectives, measures, and targets are contained in Part III, Section J, Attachment J - *Performance Evaluation and Measurement Plan (PEMP)*.
  - (2) The Parties agree to use the process in the PEMP to evaluate the performance of the Laboratory. The Parties further agree that the evaluation process described in Attachment J will be reviewed annually and modified, if necessary, by agreement of the Parties. If agreement of the Parties cannot be reached, the Contracting Officer has the unilateral right to establish the evaluation process.
  - (3) The Parties agree that the Contractor will conduct an ongoing self-assessment process as the primary means of determining its compliance with the Contract Statement of Work and performance metrics identified within Part III, Section J, Attachment J. To assist the DOE in accomplishing the appropriate level of oversight, the Contractor shall work in partnership and cooperation with DOE and other external organizations, as appropriate, in the self-assessment process. This work includes, but is not limited to, the

development and execution of self-assessments and the utilization of the results for continuous improvement. The Contractor will inform the Contracting Officer of planned assessments and provide the Contracting Officer copies of these assessments upon completion. The Contractor will also provide the Contracting Officer copies of any corrective action plans developed in response to these assessments.

- (4) The Contractor shall provide periodic updates, as requested by the DOE, on the performance against the Part III, Section J, Attachment J. The Contractor shall provide a formal status briefing at mid-year and year-end, and a formal self-evaluation report to the DOE at year-end. Specific due dates and formats for the above-mentioned briefings and reports shall be determined by the Contracting Officer. In addition, the year-end report must provide:
    - (i) An overall summary of performance for each performance goal;
    - (ii) Rating for each performance objective and measure supporting the performance goal, against the agreed to performance target;
    - (iii) A summary of key strengths and opportunities for improvement for each performance objective and measure.
  - (5) DOE, as a part of its responsibility for oversight, evaluation, and information exchange, shall provide an annual programmatic appraisal and other appraisals, and reviews of the Contractor's performance of authorized work in accordance with the terms and conditions of this Contract.
  - (6) The Contracting Officer shall annually provide a written assessment of the Laboratory's performance to the Contractor, which shall be based upon the process described in Part III, Section J, Attachment J. The Parties acknowledge that the performance levels achieved against the specific performance objectives and measures shall be the primary, but not sole, criteria for determining the Contractor's final performance evaluation and rating. The Contractor's self-assessment results, to include results of any third-party reviews that may have been conducted during the evaluation period, will be considered at all levels to assess and evaluate the Contractor's performance. The Contracting Officer may also consider other relevant information not specifically measured by the objectives and measures established within Attachment J that is deemed to have an impact (either positive or negative) on the Contractor's performance. Other relevant information that may be used by the Contracting Officer may include, but is not limited to, information gained from peer reviews, operational awareness, outside agency reviews (i.e., OIG, GAO, DCAA, etc.) conducted throughout the year, annual reviews (if needed), and DOE "for cause" reviews. Contractor success in meeting or exceeding performance expectations in a particular management or operations functional area may result in less frequent or no review of the functional area. Conversely, marginal performance or "for cause" situations may result in more frequent reviews.
- (b) Standards of performance measure review:
- (1) The Parties agree to review the PEMP elements (goals, objectives, measures, and targets) contained in Part III, Section J, Attachment J annually and to modify them upon the agreement of the Parties; provided, however, that if the Parties cannot reach agreement on all the goals, objectives, indicators and metrics/milestones, for the next period, the Contracting Officer shall have the



unilateral right to establish reasonable new goals, objectives, measures and targets, and/or to modify and/or delete existing goals, objectives, measures and targets. It is expected that the goals, objectives, measures and targets, will be modified by the Contractor and the DOE Contracting Officer as new areas of emphasis or priorities emerge which the Parties may agree warrant recognition in the performance-based integrated management approach.

- (2) Failure to include a goal, objective, measure, or target in the contract Part III, Section J, Attachment J does not eliminate the Contractor's obligation to comply with all applicable terms and conditions as set forth elsewhere within the contract.
- (3) In the event the Contracting Officer decides to exercise the rights set forth in paragraphs (a)(6) or (b)(1) above, he/she will notify the Contractor, in writing, of the intended decision ten days prior to issuance.

#### **H.14 Strengthening Federal Environmental, Energy, and Transportation Management, Executive Order 13423**

The contractor shall assist DOE through direct participation and other support in achieving DOE's energy efficiency goals and objectives in electricity, water, and thermal consumption, conservation, savings, including goals and objectives contained in Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management. The Contractor shall maintain and update, as appropriate, its Site Plan (as required elsewhere in the contract) to include detailed plans and milestones for achieving site-specific energy efficiency goals and objectives. With respect to this paragraph, the Plan shall consider all potential sources of funds, in the following order: 1) the maximum use of private sector, third-party financing applied on a life-cycle cost effective basis, particularly from Energy Savings Performance Contracts and Utility Energy Services Contracts; and 2) only after third-party financing options are evaluated, in the event energy efficiency and water conservation improvements cannot be effectively incorporated into a private sector financing arrangement that is in the best interests of the Government, then DOE funding and funding from overhead accounts can be used.

#### **H.15 Cost Recovery**

If, at any time during the performance of the Contract, the Contracting Officer disallows a cost(s) in accordance with FAR 42.8, the Contractor must repay the amount owed within 15 days of the Contracting Officer's final written determination disallowing the cost(s). (In accordance with the clause at FAR52.242-1, this determination will occur approximately 120 days after initial notice to the Contractor of disallowance.) If the Contractor fails to repay the disallowed amount within the allotted time, the Contracting Officer may offset fee payments to recover the amount owed.

#### **H.16 Lobbying Restriction (Energy And Water Act) (2007)**

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **H.17 Conditional Payment of Fee Process**

If the Fee Determining Official (FDO) or designee determines that Contractor's performance does not meet the minimum requirements identified in paragraphs (a) through (d) of Clause I.115, *Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate 1)*, the FDO or designee may make a unilateral decision to reduce the evaluation period's otherwise earned fee. If the FDO or designee elects to exercise this authority, the FDO or designee shall issue, through the Contracting Officer, a preliminary notice that includes rationale for such action and identifies specific deficiencies in the Contractor's performance. Upon notification, the Contractor shall have 14-days to provide the FDO or designee information it believes is relevant to the situation for FDO or designee consideration. The FDO or designee shall issue a final determination after the 14-day period has elapsed.

## **H.18 Application of DOE Contractor Requirements Documents**

- (a) *Performance* – The Contractor will perform the work of this Contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this Contract as Section J, Attachment F (List B), until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) *Laws and Regulations Excepted* – The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.
- (c) *Deviation Processes in Existing Orders* – The clause does not preclude the use of deviation processes provided for in existing DOE Directives.
- (d) *Proposal of Alternative* – The Director of the National Renewable Energy Laboratory may, at any time during performance of this Contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the Contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the official that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor's proposal.
- (e) *Action of the Contracting Office* – The Contracting Officer shall within sixty (60) days:
  - (1) Deny application of the proposed alternative;
  - (2) Approve the proposed alternative, with conditions or revisions;
  - (3) Approve the proposed alternative; or
  - (4) Provide a date by which a decision will be made (not to exceed an additional sixty (60) days).

- (f) *Implementation and Evaluation of Performance* – Upon approval in accordance with (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Contractor’s designated official, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.
- (g) *Application of Additional or Modified CRDs* – During performance of the Contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Attachment F List B or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within thirty (30) calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such proposal shall be in accordance with the process set out in paragraph (e) and (f). If an alternative proposal is not submitted by the Contractor within the thirty (30) calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Attachment F. The Contractor and Contracting Officer shall identify and, if appropriate, agree to any changes to other Contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.
- (h) *Deficiency and Remedial Action* – If, during performance of this Contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, at his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer’s approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency including the reinstatement of the CRD.

## **H.19 Service Contract Act Of 1965 (41 U.S.C. 351)**

The Service Contract Act of 1965 is not applicable to this contract. However, in accordance with Clause I.150, *DEAR 970.5244-1 – Contractor Purchasing System*, subcontracts awarded by the Contractor are subject to the Act to the same extent and under the same conditions as contracts awarded by DOE. The Contractor and the Contracting Officer shall develop a procedure whereby DOE will determine if the Service Contract Act is applicable to particular subcontracts

## **H.20 Walsh-Healy Public Contracts Act**

Except as otherwise may be approved in writing by the Contracting Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued there under by the Secretary of Labor, such representations and stipulations being subject to all

applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

## **H.21 Additional Labor Requirements**

The Contractor shall conduct payroll and job-site audits and conduct investigations of complaints as authorized by DOE on all Davis-Bacon activity, including any subcontracts, as may be necessary to determine compliance with the Davis-Bacon Act. Where violations are found, the Contractor shall report them to the DOE Contracting Officer. The Contracting Officer may require that the Contractor assist in the determination of the amount of restitution and withholding of funds from a subcontractor so that sufficient funds are withheld to provide restitution for back wages due for workers inappropriately classified and paid, fringe benefits owed, overtime payments due, and liquidated damages assessed.

The Contractor shall notify the Contracting Officer of any complaints and significant labor standards violations whether caused by the Contractor or subcontractors. The Contractor shall assist DOE and/or the Department of Labor in the investigation of any alleged violations or disputes involving labor standards. The Contractor shall furnish a Davis-Bacon Semi-Annual Enforcement Report to DOE by April 21 and October 21 each year.

## **H.22 Electronic Subcontracting Reporting System**

The requirement for the submittal of the Standard Form SF 294, Subcontracting Reports for Individual Contracts, and SF 295, Summary Subcontract Reports, as provided in FAR 52.219-9(j) is to be accomplished by the electronic submittal of data under the Electronic Subcontract Reporting System (eSRS).

The contractor or subcontractor shall provide such information that will allow applicable lower tier subcontractors to fully comply with the statutory requirements of FAR 19.702.

## **H.23 Compliance with Internet Protocol Version 6 (IPv6) in Acquiring Information Technology**

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that: (1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and (2) it has IPv6 technical support for development and implementation and fielded product management available.

Should the Contractor find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the Contracting Officer of such nonconformance and act in accordance with instructions of the Contracting Officer.

## **H.24 Activities During Contract Transition (Special)**

- (a) The Contractor will commence Transition Activities as soon as possible after the award of the contract and complete the following activities within sixty (60) days after contract award, except as otherwise authorized by the Contracting Officer. After completion of these activities and such other Transition Activities as may be

authorized by the Contracting Officer, the Contractor shall advise the Contracting Officer that it is ready to assume full responsibility for the Laboratory. Upon receipt of written notification from the Contracting Officer that the Transition Activities are considered complete, the Contractor shall assume full responsibility for the Laboratory, effective 12:01 A.M., the next day.

- (1) *Mission Activities* – Complete the activities that will allow the Contractor to assume control of NREL’s science, technology, and commercialization programs and facilities.
- (2) *Business Systems* – Complete the activities that will allow the Contractor to assume control of NREL’s business management systems.
- (3) *Assignment of Existing Agreement* – Complete the activities that will allow the contractor to assume full responsibility for existing regulatory (e.g., environmental permits) and commercial agreements (e.g., RDD&D subcontracts, personnel and service subcontracts, purchase orders, etc.) to be assigned to the Contractor by the Midwest Research Institute, Inc. (MRI), or otherwise taken over by Contractor.
- (4) *Joint Reconciliation Property Inventory* – Initiate and complete the planning for a joint reconciliation property inventory with the MRI, Inc., see I.151, Clause *DEAR 970.5245-1 Property*, Subsection (i)(2)(ii) in accordance with overall guidance provided by the Contracting Officer.
- (5) *Litigation Management* – Contractor shall consult with the MRI, Inc. and DOE to determine whether Contractor should assume some level of management of any litigation resulting from laboratory operations predating the effective date of this contract. The decision should be based on consideration of cost efficiency, named parties, relevance of retrospective insurance, and DOE litigation management guidelines.
- (6) *M&O Contract Financial Close-Out* – Contractor shall cooperate with DOE and the incumbent contractor in the close-out of the existing M&O contract, and will support all close-out activities.
- (7) *Human Resources*
  - (i) The Contractor will transition the workforce without break in service as operations cease under Contract DE-AC36-99GO10337.
  - (ii) The Contractor will conduct work force planning, documented in the form of a plan, to be submitted to the Contracting Officer for review and approval at the end of the Transition Period. The Plan will identify the status of critical-skills and the strategy for the recruitment and/or retention of those skills, and specifically address the issues set forth below.
    - (A) If the Contractor intends to use “Joint Appointees” with educational institutions; how said “Joint Appointees” will be used; terms to be used; and a description of the reimbursement process to be negotiated with the educational institutions.
    - (B) Incentive compensation strategy for “Key Personnel,” other management personnel, and other employees, as appropriate, that meets the criteria of the DOE Acquisition Guide, Chapter 70.5,

which can be located on the internet at

[http://www.management.energy.gov/policy\\_guidance/Acquisition\\_Guide.htm](http://www.management.energy.gov/policy_guidance/Acquisition_Guide.htm)

- (C) The following will be specifically addressed under the *Human Resources Compensation Plan*, required to be submitted within 60 days after award, pursuant to Clause H.3:
- 1) The framework for the pension and health/welfare benefits applicable to the transferring workforce, with an assessment of the benefit value relative to those provided by the Midwest Research Institute, Inc. for NREL employees; and
  - 2) A framework of the total compensation package applicable to new hires under the contract.
- (b) Except as provided in paragraph (c) below, or as otherwise specifically agreed to by the Contractor and the Contracting Officer, all of the provisions of this contract shall apply to the Contractor's performance of Transition Activities.
- (c) The following contract articles or portions thereof as noted below do not apply to the Contractor's Transition Activities:
- (1) Clause C.4, *Scope of Work*;
  - (2) Clause H.11, *Contractor Acceptance of Notices of Violations or Alleged Violations, Fines, and Penalties*;
  - (3) Clause H.12, *Long-Range Planning, Program Development and Budgetary Administration*;
  - (4) Clause H.13, *Standards of Contractor Performance Evaluation*;
  - (5) Clause I.114, *Total Available Fee: Base Fee Amount and Performance Fee Amount*;
  - (6) Clause I.115, *Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts*;
  - (7) Clause I.116, *Work For Others Program (Non-DOE Funded Work)*;
  - (8) Clause I.142, *Work for Others Funding Authorization*;
- (d) Contractor agrees to perform the activities set forth in paragraph (a) above, including relocation of Contractor's "Key Personnel," as described in its Cost Proposal, at the allowable estimated cost in B.3 (a).

## **H.25 Special Financial Institution Account Agreement**

- (a) DOE shall make arrangements to execute a new Special Financial Institution Account Agreement (which shall be effective through September 30, 2009) with the U.S. Bank and provide said Agreement to the Contractor for its execution. Said Agreement having been executed by DOE, Contractor and U.S. Bank was incorporated by reference through Modification M004.

- (b) Contractor agrees to procure, in accordance with DOE requirements, a new Special Financial Institution Account Agreement in sufficient time to have said Agreement in place and effective as of October 1, 2009.

## **H.26 Organizational Conflicts Of Interest, Management Plan and Implementation Program**

The Contractor's Organizational Conflicts of Interest Management Plan and Implementation Program (OCI Plan) are incorporated herein. The Contractor will consistently follow the Contractor's Organizational Conflicts of Interest Management Plan and Implementation Program. Changes to the Contractor's OCI Plan must be specifically approved by the Contracting Officer and may be proposed by either the Government or the Contractor. The Contractor agrees to negotiate with the Contracting Officer as to which changes are made. Such changes will be applied prospectively and not retrospectively to this Contract.

## **H.27 Counterintelligence Implementation**

Consistent with Clause I.109, 970.5204-1, *Counterintelligence* of this Contract, the Contractor shall take all reasonable precautions in the work under this Contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes. To meet these requirements the Contractor will comply with DOE 475.1 Counterintelligence Program. All other provisions of Clause I.109, 970.5204-1 *Counterintelligence* shall be implemented.

## **H.28 Employee Concerns Program**

The Contractor shall submit an implementation plan to the Contracting Officer for approval within 90 days of contract award that describes an Employee Concerns Program (ECP) that implements all programmatic requirements in DOE Order 442.1A, and DOE Guide 442.1-1, Employee Concerns Program, and all superseding versions. Guidance for preparation of an ECP Plan is provided in Section L, Enclosure I.

## **H.29 DEAR 952.219-70 DOE Mentor-Protégé Program (May 2000)**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. The contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact DOE's Office of Small and Disadvantaged Business Utilization.

## **H.30 Incurrence of Relocation Costs Prior to the Initiation of M&O Activities**

Relocation costs for non-key personnel that would be properly charged to the contract upon initiation of M&O activities may be incurred by the Contractor after the initiation of Transition Activities. These costs will be considered allowable and allocable under the contract if they comply with all Federal laws, regulations, DOE Orders and would have been considered allowable and allocable if incurred after beginning the M&O activities. These costs shall not be invoiced or paid prior to DOE concurrence that M&O activities may begin. These costs shall be accumulated and recorded separately to allow for DOE review.

### **H.31 Exemption of Management and Operation Contractual Obligations for Real Property Encumbered by Government's Easement Outgrant**

- (a) On October 29, 2007 the Government granted to SunE SRI NREL, LLC (Grantee) an Easement Outgrant for the Installation and Operation of a Solar Electric Generating System at NREL.
- (b) Such Easement Outgrant transferred rights and responsibilities to Grantee for the management and operation of that certain real property located on and adjacent to NREL, generally described as a tract of land in the Southwest Quarter (SW ¼) of Section Thirty Six, Township Three South, Range Seventy West of the 6<sup>th</sup> Principal Meridian, Jefferson County, Colorado, and more particularly described in Exhibit A of the October 29, 2007 Easement Outgrant for Installation and Operation of a Solar Electric Generating System at NREL (hereafter "Mesa Top Solar Electric Generating System Easement Property").
- (c) Pursuant to such Easement, Grantee is obligated to manage and operate such Mesa Top Solar Electric Generating System Easement Property in accordance with the highest safety, health, environmental, and operational standards, including but not limited to: (i) environment, safety, and health management; (ii) site access, access control, and security; (iii) management and disposal of fuels, hazardous or toxic materials, and wastes; (iv) property protection; (v) insurance against risks and liabilities with Contractor and the Government identified as additional insured; and (vi) to the extent arising out of Grantee's negligence or willful misconduct, indemnification of Contractor and the Government from and against any and all losses incurred to the extent arising from or out of any claim for personal injury, including death, or loss or damage to property or any claim for infringement of patents or improper use of other proprietary rights.
- (d) Consistent with the transfer of management and operation rights and responsibilities by the Government to the Grantee under such Easement, the Contractor is exempt from obligations for any and all contractual management and operation rights and responsibilities for the Mesa Top Solar Electric Generating System Easement Property.



### **H.32 Privately Funded Technology Transfer Program**

Contractor has accepted as a “Mission and Operational Performance Goal” that it will “develop the tools, strategies, and relationships necessary to support achievement of state, national, and international energy goals”. An “Attribute of Performance” is that it will “mature promising technologies and rapidly transfer these technologies to the public and private sectors, in the process reduc(ing) risk for public and private sector decision makers”. To that end, Contractor and DOE shall begin negotiations as soon as practicable after October 1, 2008 toward the establishment of the operating parameters under which the Contractor shall operate a “Privately Funded Technology Transfer (PFTT) Program” at NREL guided by the principles set forth in the RFP. The parties shall negotiate in good faith for incorporation of a PFTT clause prior to January 31, 2009. When adopted, the PFTT Program shall (i) include mechanisms whereby Contractor may bring private investment to NREL for the maturation, patenting, marketing and licensing of NREL Intellectual Property, thereby (ii) reducing the risk to EERE and allowable NREL budgets and (iii) increasing the likelihood of transferring these technologies to both the public and private sectors, while (iv) ensuring the benefits of such commercialization inure to the benefit of the Laboratory and its missions and objectives.

### **H.33 Provisional Payment of Fee**

- (a) The Contractor may draw up to one-twelfth (1/12) of 90% of the available fee for the fiscal year on the first day of each month, unless otherwise directed in writing by the Contracting Officer. The draw-down of fee is not to be construed as an evaluation of performance under clause DEAR 970.5215-1, “Total Available Fee: Base Fee Amount and Performance Fee Amount.”
- (b) Should DOE’s evaluation of Contractor performance at the end of the fiscal year yield an earned fee less than the amount already drawn down by the Contractor, the Contractor agrees to repay the difference with interest calculated in accordance with DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount.

### **H.34 Temporary Laboratory Closures at NREL**

- (a) From time to time it may become necessary to temporarily close the laboratory or a portion thereof for imminent safety or security reasons. When such a condition exists, the NREL Laboratory Director or his designee shall immediately inform the Golden Field Office (GFO) Manager or her designee of his decision to close the Laboratory or portion thereof and provide her with the rationale and need for such closure.
- (b) There may be other conditions in which a laboratory closure is appropriate and needed. In such cases, the Laboratory Director or his designee will contact the GFO Manager or her designee stating the need and rationale for the closure. With the concurrence of the GFO Manager, the Laboratory Director shall be authorized to make such closure.

### **H.35 Special Provisions Relating to Work Funded Under American Recovery and Reinvestment Act of 2009 (Feb 2009)**

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act).

The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the inspector general.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

Contractors must include this clause in every subcontract over \$25,000 that is funded, in whole or in part, by the Recovery Act unless the subcontract is with an individual.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance. Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### D. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See

<http://www.dol.gov/esa/whd/contracts/dbra.htm>.

#### E. Publication

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under paragraph H below.

#### G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

*Note: The following paragraphs, H, I, and J, are in effect until the FAR is modified to implement these provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify the contract to incorporate the FAR clauses that implement the Recovery Act. The following paragraphs will no longer be valid and the contract will be considered modified to add the new FAR provisions and clauses in Section I.*

#### H. American Recovery and Reinvestment Act-Reporting Requirements

(a) Definitions. As used in this clause -

“First-tier Subcontract” means a subcontract awarded directly by a Federal government prime contractor funded by the Recovery Act.

“Jobs Created” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as “full-time equivalent” which shall include full-time, part-time, temporary, permanent, positions as expressed as a “person-year,” consistent with the contractor’s existing personnel procedures. This includes positions at the prime level, and the prime contractor’s estimate of positions at the first subcontract tier.

“Jobs retained” means an estimate of those previously existing unfilled positions that are filled as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as “full-time equivalent” which shall include full-time, part-time, temporary, permanent, positions as expressed as a “person-year,” consistent with the contractor’s existing personnel procedures. This includes positions at the prime level, and the prime contractor’s estimate of positions at the first subcontract tier.

“Total Compensation” means the complete pay package of contractor employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CCR 229.402.

(b) This contract requires products and/or services which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor that receives contracts from a Federal agency under the Recovery Act to report on use of funds.

(c) Reporting starts with the later of the first calendar quarter in which the contractor invoices the Government for work funded by Recovery funds, or the second calendar quarter of 2009.

Reporting is required not later than 10 days after the end of each calendar quarter. The Contractor shall report the following information, using the online reporting tool available at TBD. If the tool is not available when the contractor's report is due, the contractor shall maintain the data necessary to report for that quarter when the tool becomes available or submit the report in hard or soft copy if required by the Contracting Officer.

- (1) the amount of recovery funds invoiced by the contractor, cumulative since the beginning of the contract;
- (2) a detailed list of all services performed or supplies delivered for which the contractor has invoiced, including –
  - (i) project title, if any;
  - (ii) a description of the project;
  - (iii) an assessment of the contractor's progress towards the completion of the requirements of the contract (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.
  - (iv) an estimate of the number of jobs created by the project, in the United States and outlying areas; and
  - (v) an estimate of the number of jobs retained by the project, in the United States and outlying areas. A job cannot be reported as both created and retained.
- (3) the Government contract number.
- (4) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded if –
  - (i) in the Contractor's preceding fiscal year, the Contractor received--
    - (A) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
  - (ii) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- (5) detailed information on any first-tier subcontract over \$25,000, where the subcontractor is not an individual, awarded by the contractor, funded under the Recovery Act, to include the following:
  - (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and of the subcontractor's parent company, if any.
  - (ii) Name of the subcontractor.
  - (iii) Amount of the subcontract award.
  - (iv) Date of the subcontract award.
  - (v) The applicable North American Industry Classification System code.
  - (vi) Funding agency.
  - (vii) A description of the product or service to be provided under the subcontract.
  - (viii) Subcontract number (the contract number assigned by the prime contractor).
  - (ix) Subcontractor physical address including street address, city, state and nine-digit zip code and congressional district if in the United States.
  - (x) Subcontract primary performance location including street address, city, state and nine-digit zip code and congressional district if in the United States.
  - (xi) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the subcontract is awarded if –
    - (i) entity in the subcontractor's preceding fiscal year, the subcontractor received --
      - (A) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
      - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
    - (ii) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986,

(Note: the information in paragraphs (i) through (x) are not required to be reported for any contractor or first-tier subcontractor whose gross income did not exceed \$300,000 in the previous tax year.)

(6) For subcontracts under \$25,000 or any subcontracts awarded to an individual, the total number of subcontracts awarded in the quarter and their total dollar amount.

I. Audit and Records—Negotiation

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

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the 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 contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the 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 Contractor’s records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, 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 Contractor’s or any subcontractors’ directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

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

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the 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 Contractor’s policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) Availability. The Contractor 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 contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract 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 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 Contracting Officer under the Government prime contract.

J. Buy American

[When using funds appropriated under the American Recovery and Reinvestment Act for construction, use clauses 52.225-XX, 52.225-, 52.225-ZZ, or 52.225-.WW. Use 52.225-.XX and 52.225-YY for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States under \$7,443,000 and 52.225-ZZ and 52.225-WW for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States and over \$7,443,000.]

52.225-XX Required Use of American Iron, Steel, and Other Manufactured Goods and Buy American Act —Construction Materials.

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

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

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

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

(b) *Domestic preference.*

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act (Pub. L. 111-5,) by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate “none”*]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent; 1

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the American Recovery and Reinvestment Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

<sup>1</sup> The contracting officer would have to compare the offered price using foreign material to the price if all domestic material were used, based on the information provided by the offeror. If it does not increase the overall price by more than 25%, then it is not allowed. Offeror must then provide domestic.

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the American Recovery and Reinvestment Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the American Recovery and Reinvestment Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

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

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

