

CUSTOMER CONTRACT REQUIREMENTS
Human-Assisted-Manufacturing Model Library
CUSTOMER CONTRACT FA8650-11-2-7127

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.204-10 Reporting Executive Compensation And First-Tier Subcontract Awards (JUL 2010).

Delete all paragraphs except (b). Contractor means Buyer in paragraph (b). The "required information" in paragraph (b) that will be made public includes the information required as set forth in the deleted paragraphs.

2. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

2.012 TRAFFICKING IN PERSONS (DEC 2007). (a) Provisions applicable to a recipient that is a private entity.

(1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not--

(i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procure a commercial sex act during the period of time that the award is in effect; or (iii) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity --

(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either--

(A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at AFRL/RX

(b) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--

(i) Associated with performance under this award; or

(ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at AFRL/RX

(c) Provisions applicable to any recipient.

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- (d) Definitions. For purposes of this award term:
 - (1) "Employee" means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - (2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (3) "Private entity":
 - (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - (ii) Includes:
 - (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - (B) A for-profit organization.
 - (4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

4.020 STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS (NOV 1999). The supplier shall establish or use existing financial systems that comply with Generally Accepted Accounting Principles (GAAP) and DoDGARs 34.11.

6353 PATENT RIGHTS -OWNERSHIP BY THE RECIPIENT (LARGE BUSINESS) (APR 2011).

(a) Definitions. As used in this clause-

"Invention" means-

- (1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or
- (2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Made"-

- (1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or
- (2) When used in relation to a plant variety, means that the Recipient has at least

tentatively determined that the variety has been reproduced with recognized characteristics.

"Nonprofit organization" means-

- (1) A university or other institution of higher education;
- (2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or
- (3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

"Practical application" means-

- (1)(i) To manufacture, in the case of a composition or product;
- (ii) To practice, in the case of a process or method; or
- (iii) To operate, in the case of a machine or system; and
- (2) In each case, under such conditions as to establish that-
 - (i) The invention is being utilized; and
 - (ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention" means any invention of the Recipient made in the performance of work under this agreement.

(b) Recipient's rights.

- (1) Ownership. The Recipient may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.
- (2) License.
 - (i) The Recipient shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Recipient fails to disclose the invention within the times specified in paragraph (c) of this clause. The Recipient's license-
 - (A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Recipient is a part;
 - (B) Includes the right to grant sublicenses to the extent the Recipient was legally obligated to do so at the time of contract award; and
 - (C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(ii) The agency-

(A) May revoke or modify the Recipient's domestic license to the extent

necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical

areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent

the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency-

(A) Will furnish the Recipient a written notice of its intention to revoke or modify the license; and

(B) Will allow the Recipient 30 days (or such other time as the funding

agency may authorize for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified.

(iv) The Recipient has the right to appeal, in accordance with 37 CFR Part 404

and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) Recipient's obligations.

(1) The Recipient shall-

(i) Disclose, in writing, each subject invention to the Grants Officer within 2

months after the inventor discloses it in writing to Recipient personnel responsible for patent matters, or within 6 months after the Recipient first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure-

(A) The inventor(s) and the agreement under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Grants Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Recipient shall elect in writing whether or not to retain ownership of any subject invention by notifying the Grants Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Recipient will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient shall-

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Recipient may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Grants Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) Government's rights.

(1) Ownership. The Recipient shall assign to the agency, upon written request, title to any subject invention-

(i) If the Recipient elects not to retain title to a subject invention;

(ii) If the Recipient fails to disclose or elect the subject invention within the times

specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Recipient's failure to report or elect within the specified times;

(iii) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Recipient shall continue to retain ownership in that country; and

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

(2) License. If the Recipient retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) Recipient action to protect the Government's interest.

(1) The Recipient shall execute or have executed and promptly deliver to the agency all instruments necessary to-

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Recipient elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Recipient shall-

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to-

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Recipient can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Recipient's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Recipient shall notify the Grants Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Recipient shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."

(5) The Recipient shall-

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of-

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Grants Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Recipient shall, when licensing a subject invention, arrange to-

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Recipient shall furnish to the Grants Officer the following:

- (i) Interim reports every 12 months (or any longer period as may be specified by the Grants Officer) from the date of this agreement, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.
 - (ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.
- (8)(i) The Recipient shall promptly notify the Grants Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying-
- (A) The subrecipient;
 - (B) The applicable patent rights clause;
 - (C) The work to be performed under the subcontract; and
 - (D) The dates of award and estimated completion.
- (ii) The Recipient shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.
- (9) In the event of a refusal by a prospective subrecipient to accept one of the clauses specified in paragraph (l)(1) of this clause, the Recipient-
- (i) Shall promptly submit a written notice to the Grants Officer setting forth the subrecipient's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with that subcontract without the written authorization of the Grants Officer.
- (10) The Recipient shall provide to the Grants Officer, upon request, the following information for any subject invention for which the Recipient has retained ownership:
- (i) Filing date.
 - (ii) Serial number and title.
 - (iii) A copy of any patent application (including an English-language version if filed in a language other than English).
 - (iv) Patent number and issue date.
- (11) The Recipient shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) Reporting on utilization of subject inventions.

(1) The Recipient shall-

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Recipient or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Recipient's permission, if the data or information is considered by the Recipient or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) Preference for United States industry. Notwithstanding any other provision of this clause, the Recipient agrees that neither the Recipient nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Recipient or its assignee that-

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) March-in rights. The Recipient acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) Examination of records relating to inventions.

(1) The Grants Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether-

(i) Any inventions are subject inventions;

(ii) The Recipient has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Grants Officer learns of an unreported Recipient invention that the Grants Officer believes may be a subject invention, the Recipient shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this agreement, the Grants Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the agreement, whichever is less, is set aside if, in the Grants Officer's opinion, the Recipient fails to-

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Grants Officer has determined that the Recipient has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this agreement before the Recipient delivers to the Grants Officer-

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Grants Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of this agreement. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) COMMUNICATIONS: The Recipient shall forward the invention reports called for through AFMC LO/JAZI, 2240 B Street, Room 100, Wright Patterson AFB, OH 45433-7109. Invention reports may be e-mailed to: afmclo.jaz@wpafb.af.mil <<mailto:afmclo.jaz@wpafb.af.mil>>. Ensure e-mail includes agreement number, followed by the words "Invention Reporting" in the subject line.

(m) Subcontracts.

(1) The Recipient -

(i) Shall include the substance of this article, including this article (m), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization, unless a different patent rights clause is required.

(2) For subrecipients at any tier-

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subrecipient all the rights and obligations provided to the Recipient in the clause. The Recipient shall not, as consideration for awarding the subcontract, obtain rights in the subrecipient's subject inventions; and

(ii) The Government, the Recipient, and the subrecipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

6.020 INVENTIONS (NOV 1999). (a) The clause entitled "Patent Rights (Small Business Firms and Nonprofit Organizations (37 CFR 401.14))" is hereby incorporated by reference and the clauses in paragraph 401.14 are modified as follows: replace the word

"contractor" with "recipient"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "government"; replace the word "contract" with "agreement"; delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1). Paragraph (L), Communication, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office.

(b) The recipient shall file Invention (Patent) Reports as of the close of each performance year and at the end of the term for this Agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 90 days after the expiration of the final performance period. The recipient shall use DD Form 882, Report of Inventions and Subcontracts, to file an inventions report.

Negative reports are also required. The recipient shall submit the original and one copy to the servicing Staff Judge Advocate's office, one copy to the grants administration office, and one copy to the grants officer, if different than the grants administration office.

6.030 Data Rights (NOV 1999).

The Government shall receive complete, fully functional algorithms, source code, documentation, binaries, and test use cases implementing unlimited rights. The recipient grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data and/or computer software documentation as follows:

(1) Unlimited rights. The Government shall have unlimited rights in technical data that are-

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this cooperative agreement, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a cooperative agreement that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the recipient by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the recipient or subrecipient without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract, grant, or cooperative agreement or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government cooperative

agreement or subagreement thereunder, with-

(A) Government purpose license rights or limited rights and the restrictive condition(s)

has/have expired; or

(B) Government purpose rights and the recipient's exclusive right to use such data for

commercial purposes have expired.

7353 DISCLOSURE OF INFORMATION (APR 2011).

To comply with this article (Disclosure of Information) the Recipient should submit two copies of the information to be released to the Air Force Program Manager and DARPA Program Manager at least 45 days prior to the scheduled release date.

The DARPA Public Affairs office (DARPA/PRC) is hereby designated as the approval authority for the Grants Officer.

(a) The Recipient shall not release to anyone outside the Recipient's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Grants Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Recipient shall submit its request to the Grants Officer at least 45 days before the proposed date for release.

(c) The Recipient agrees to include a similar requirement in each subcontract under this agreement.

Sub-recipients shall submit requests for authorization to release through the prime contractor to the Grants Officer.

NOTE: THE RESTRICTIONS OF THIS ARTICLE DO NOT FLOW DOWN TO EDUCATIONAL INSTITUTION SUB-RECIPIENTS.

8353 PRESERVATION, PACKAGING, AND PACKING AND MARKING REQUIREMENTS (APR 2011).

Marking for Deliverables Other than Financial Reports:

Copyright (c) <year>, <copyright holder>.

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9354 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (NOV 2010).

(a) Definitions. As used in this clause:

"Executive" means officers, managing partners, or any other employees in management positions.

"First-tier subcontract" means a subcontract awarded directly by a Recipient to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Recipient's general and administrative expenses or indirect cost.

"Total compensation" means the cash and noncash dollar value earned by the executive during the Recipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

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

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

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

- (6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- (b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Recipient to report information on subcontract awards. The law requires all reported information be made public, therefore, the Recipient is responsible for notifying its subrecipients that the required information will be made public.
- (c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Recipient shall report the following information at <http://www.fsrs.gov> for each first-tier subcontract. (The Recipient shall follow the instructions at <http://www.fsrs.gov> to report the data.)
- (i) Unique identifier (DUNS Number) for the subrecipient receiving the award and for the subrecipient's parent company, if the subrecipient has a parent company.
- (ii) Name of the subrecipient.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (vi) Subcontract number (the subcontract number assigned by the Recipient).
- (vii) Subrecipient's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subrecipient's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.

(xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Recipient shall report the names and total compensation of each of the five most highly compensated executives for the Recipient's preceding completed fiscal year at <http://www.ccr.gov> , if-

(i) In the Recipient's preceding fiscal year, the Recipient received-

(A) 80 percent or more of its annual gross revenues from 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 executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm> .)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Recipient shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subrecipient for the subrecipient's preceding completed fiscal year at <http://www.fsr.gov> , if-

(i) In the subrecipient's preceding fiscal year, the subrecipient received-

(A) 80 percent or more of its annual gross revenues from 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 executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm> .)

(d)(1) If the Recipient in the previous tax year had gross income, from all sources, under \$300,000, the Recipient is exempt from the requirement to report subrecipient awards.

(2) If a subrecipient in the previous tax year had gross income from all sources under \$300,000, the Recipient does not need to report awards to that subrecipient.

(e) Phase-in of reporting of subcontracts of \$25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

9.010 Assurances (JUN 2001).

(a) By signing or accepting funds under the agreement, the recipient assures that it will comply with applicable provisions of the following National policies on:

(1) Prohibiting discrimination:

(i) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;

(ii) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;

(iii) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56;

(2) The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799).

(b) The recipient shall obtain assurances of compliance from contractors and recipients at lower tiers.

9.020 U.S. FLAG AIR CARRIERS (NOV 1999).

Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance

with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol 63, No. 219, 63417-63421.)

Flowdown of DoDGARs Requirements .

1. FLOWDOWN OF DODGARS REQUIREMENTS

- (a) If the subawardee is a university or other nonprofit organization, DoDGARs part 32 shall apply to this subaward/contract/agreement/Purchase Contract. If the subawardee is a state or local government, DoDGARs part 33 shall apply to this subaward/contract/agreement/Purchase Contract. If the subawardee is for profit entity, DoDGARs part 34 shall be applied to for-profit entities.

Appendix A to DoDGARs part 34 shall apply in each of the above cases.

- (b) The recipient shall apply to each subaward the requirements of the DoDGARs applicable to the particular type of subrecipient. DoDGARs part 32 shall be applied to awards to universities or other nonprofit organizations, DoDGARs part 33 shall be applied to awards to state and local governments, and DoDGARs part 34 shall be applied to for-profit entities.
- (c) Recipients awarding contracts under this agreement shall assure that contracts awarded contain the provisions in Appendix A to DoDGARs part 34.