

PART II

SECTION I- CONTRACT CLAUSES

I.1 FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.acquisition.gov/far>
<http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>

Clause No.	FAR/DEAR Reference	Title	Fill-In Information See FAR 52.104(D)
I.2	52.202-1	Definitions (Nov 2013)	
I.3	52.203-3	Gratuities (Apr 1984)	
I.4	52.203-5	Covenant Against Contingent Fees (May 2014)	
I.5	52.203-6	Restrictions on Subcontractor Sales to the Government (Sep 2006)	
I.6	52.203-7	Anti-Kickback Procedures (May 2014)	
I.7	52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)	
I.8	52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (May 2014)	
I.9	52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)	
I.10	52.203-13	Contractor Code of Business Ethics and Conduct (Apr 2010)	
I.11	52.203-14	Display of Hotline Poster(s) (Dec 2007)	(b)(3) DOE IG Hotline Poster: http://energy.gov/sites/prod/files/ig_prod/documents/Hotline_poster.pdf
I.12	55.203-17	Contractor Employee Whistleblower Rights and	

		Requirement to Inform Employees of Whistleblower Rights (Apr 2014)	
I.13	52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)	
I.14	52.204-9	Personal Identity Verification of Contractor Personnel (Jan 2011)	
I.15	52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (Jul 2013)	
I.16	52.204-13	System for Award Management Maintenance (Jul 2013)	
I.17	52.204-14	Service Contract Reporting Requirements (Jan 2014)	
I.18	52.209-6	Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, Or Proposed for Debarment (Aug 2013)	
I.19	52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013)	
I.20	52.209-10	Prohibition on Contracting With Inverted Domestic Corporations (May 2012)	
I.21	52.210-1	Market Research (Apr 2011)	
I.22	52.215-2	Audit and Records – Negotiation (Oct 2010)	
I.23	52.215-8	Order of Precedence – Uniform Contract Format (Oct 1997)	
I.24	52.215-11	Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Aug 2011)	
I.25	52.215-13	Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010)	
I.26	52.215-14	Integrity of Unit Prices (Oct 2010)	
I.27	52.215-15	Pension Adjustments and Asset Reversions (Oct 2010)	
I.28	52.215-17	Waiver of Facilities Capital Cost of Money (Oct 1997)	
I.29	52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB)	

		Other Than Pensions (Jul 2005)	
I.30	52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (Oct 2010) (Alternate III (OCT 1997))	
I.31	52.215-23	Limitations on Pass-Through Charges (Oct 2009)	
I.32	52.216-7	Allowable Cost and Payment (Jun 2013)	(a)(3) 15 th (cost invoices) and 30 th (fee invoices)
I.33	52.216-10	Incentive Fee (Jun 2011)	
I.34	52.217-2	Cancellation Under Multiyear Contracts (OCT 1997)	
I.35	52.217-7	Option for Increased Quantity— Separately Priced Line Item (Mar 1989)	<u>Within three, four years, etc. of the contract effective date for CLIN 00001a; within xxx years of the contract effective date for CLIN 00001b; within xxx years of the contract effective date for CLIN 00001c; within xxx years of the contract effective date for CLIN 00001d; within xxx years of the contract effective date for CLIN 00001e; within xxx years of the contract effective date for CLIN 00001f;</u>
I.36	52.217-8	Option to Extend Services (Nov 1999)	Within 30 days of the contract expiration date.
I.37	52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011)	(c) Offeror fill in
I.38	52.219-8	Utilization of Small Business Concerns (May 2014)	
I.39	52.219-9	Small Business Subcontracting Plan (Jul 2013 Oct 2014) - Alternate II (OCT 2001) <u>(DEVIATION 2013-00014) (AUG 2013)</u>	
I.40	52.219-16	Liquidated Damages – Subcontracting Plan (Jan 1999)	
I.41	52.219-28	Post-Award Small Business Program Rerepresentation (Jul 2013)	
I.42	52.222-1	Notice to the Government of Labor Disputes (Feb 1997)	

Comment [Ias1]: discuss and update with SEB

I.43	52.222-2	Payment for Overtime Premiums (Jul 1990)	(a) "zero"
I.44	52.222-3	Convict Labor (Jun 2003)	
I.45	52.222-4	Contract Work Hours and Safely Standards Act – Overtime Compensation (May 2014)	
I.46	52.222-17	Nondisplacement of Qualified Workers (May 2014)	
I.47	52.222-21	Prohibition of Segregated Facilities (Feb 1999)	
I.48	52.222-26	Equal Opportunity (Mar 2007)	
I.49	52.222-35	Equal Opportunity for Veterans (Jul 2014)	
I.50	52.222-36	Equal Opportunity for Workers with Disabilities (Jul 2014)	
I.51	52.222-37	Employment Reports on Veterans (Jul 2014)	
I.52	52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)	
I.53	52.222-41	Service Contract Labor Standards (May 2014)	
I.54	52.222-50	Combating Trafficking in Persons (Feb 2009)	
I.55	52.222-54	Employment Eligibility Verification (Aug 2013)	
I.56	52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)	
I.57	52.223-3	Hazardous Material Identification and Material Safety Data (JAN 1997) - Alternate I (JUL 1995)	(b) Offeror fill in
I.58	52.223-5	Pollution Prevention and Right-to-Know Information (May 2011) Alternate II (May 2011)	
I.59	52.223-6	Drug-Free Workplace (May 2001)	
I.60	52.223-10	Waste Reduction Program (May 2011)	
I.61	52.223-12	Refrigeration Equipment and Air Conditioners (May 1995)	
I.62	52.223-15	Energy Efficiency in Energy-Consuming Products (Dec 2007)	

I.63	52.223-16	Acquisition of EPEAT® - Registered Personal Computer Products (Jun 2014)	
I.64	52.223-17	Affirmative Procurement of EPA-designated Items in Service and Construction Contracts (May 2008)	
I.65	52.223-18	Encouraging Contractors Policies to Ban Text Messages While Driving (Aug 2011)	
I.66	52.223-19	Compliance With Environmental Management Systems (May 2011)	
I.67	52.224-1	Privacy Act Notification (Apr 1984)	
I.68	52.224-2	Privacy Act (Apr 1984)	
I.69	52.225-1	Buy American – Supplies (May 2014)	
I.70	52.225-13	Restrictions on Certain Foreign Purchases (Jun 2008)	
I.71	52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)	
I.72	52.227-23	Rights to Proposal Data (Technical) (Jun 1987)	Offeror fill in TBD [“data contained on pages”] TBD [proposal dated]
I.73	52.228-7	Insurance – Liability to Third Persons (Mar 1996)	
I.74	52.230-2	Cost Accounting Standards (May 2014)	
I.75	52.230-6	Administration of Cost Accounting Standards (Jun 2010)	
I.76	52.232-9	Limitation of Withholding of Payments (Apr 1984)	
I.77	52.232-17	Interest (May 2014)	
I.78	52.232-18	Availability of Funds (Apr 1984)	
I.79	52.232-22	Limitation of Funds (Apr 1984)	
I.80	52.232-23	Assignment of Claims (May 2014)	
I.81	52.232-25	Prompt Payment (Jul 2013) Alternate I (FEB 2002)	
I.82	52.232-33	Payment by Electronic Funds Transfer – System for Award Management (Jul 2013)	
I.83	52.233-1	Disputes (May 2014) - Alternate	

		1 (Dec 1991)	
I.84	52.233-3	Protest after Award (Aug 1996) – Alternate I (Jun 1985)	
I.85	52.233-4	Applicable Law for Breach of Contract Claim (Oct 2004)	
I.86	52.234-4	Earned Value Management System (May 2014)	(g) TBD
I.87	52.236-5	Material and Workmanship (Apr 1984)	
I.88	52.236-7	Permits and Responsibilities (Nov 1991)	
I.89	52.236-18	Work Oversight in Cost-Reimbursement Construction Contracts (Apr 1984)	
I.90	52.236-19	Organization and Direction of the Work (Apr 1984)	
I.91	52.237-2	Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)	
I.92	52.237-3	Continuity of Services (Jan 1991)	
I.93	52.239-1	Privacy or Security Safeguards (Aug 1996)	
I.94	52.242-1	Notice of Intent to Disallow Costs (Apr 1984)	
I.95	52.242-3	Penalties for Unallowable Costs (May 2014)	
I.96	52.242-4	Certification of Final Indirect Costs (Jan 1997)	
I.97	52.242-13	Bankruptcy (Jul 1995)	
I.98	52.243-2	Changes – Cost Reimbursement (Aug 1987) – Alt II and III (Apr 1984)	
I.99	52.244-2	Subcontracts (Oct 2010) Alt I (Jun 2007)	(e), (j) Contracting Officer fill in at award
I.100	52.244-5	Competition in Subcontracting (Dec 1996)	
I.101	52.244-6	Subcontracts for Commercial Items (Jul 2014)	
I.102	52.245-1	Government Property (Apr 2012)	
I.103	52.245-9	Use and Charges (Apr 2012)	
I.104	52.246-25	Limitation of Liability – Services (Feb 1997)	

I.105	52.247-1	Commercial Bill of Lading Notations (Feb 2006)	(a) Department of Energy (b) Department of Energy Solicitation No. DE-SOL-0007057 the Contract Administration Office specified in the Section G
I.106	52.247-67		
I.107	52.247-68	Report of Shipment (REPSHIP) (Feb 2006)	
I.108	52.248-1	Value Engineering (Oct 2010)	(m) Contracting Officer fill in at award
I.109	52.249-6	Termination (Cost-Reimbursement) (May 2004)	
I.110	52.249-14	Excusable Delays (Apr 1984)	
I.111	52.251-1	Government Supply Sources (Apr 2012)	
I.112	52.251-2	Interagency Fleet Management Systems Vehicles and Related Services (Jan 1991)	
I.113	52.253-1	Computer Generated Forms (Jan 1991)	
I.114	952.202-1	Definitions (FEB 2011)	
I.115	952-203-70	Whistleblower Protection for Contractor Employees (Dec 2000)	
I.116	952-204-2	Security (Mar 2011)	
I.117	952-204-70	Classification/Declassification (Sep 1997)	
I.118	952.204-75	Public Affairs (Dec 2000)	
I.119	952.204-77	Computer Security (Aug 2006)	
I.120	952.208-7	Tagging of Leased Vehicles (Apr 1984)	
I.121	952.208-70	Printing (Apr 1984)	
I.122	952.209-72	Organizational Conflicts of Interest (Aug 2009)	
I.123	952.215-70	Key Personnel (Dec 2000)	(a) See Section H clause <i>Key Personnel</i>
I.124	952.216-7	Allowable Cost and Payment (FEB 2011)	
I.125	952.217-70	Acquisition of Real Property (Mar 2011)	
I.126	952.219-70	DOE Mentor-Protégé Program (May 2000)	
I.127	952.223-72	Radiation Protection and Nuclear Criticality (Apr 1984)	
I.128	952.223-75	Preservation of Individual	

		Occupational Radiation Exposure Records (Apr 1984)	
I.129	952.223-76	Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (DEC 2010)	
I.130	952.223-78	Sustainable Acquisition Program (OCT 2010)	
I.131	952.226-74	Displaced Employee Hiring Preference (Jun 1997)	
I.132	952.227-82	Rights to Proposal Data (Apr 1994)	Offeror fill in TBD [“data contained on pages”] TBD [proposal dated]
I.133	952.231-71	Insurance Litigation and Claims (Jul 2013)	
I.134	952.247-70	Foreign Travel (Jun 2010)	
I.135	952.250-70	Nuclear Hazards Indemnity Agreement (Jun 1996)	
I.136	952.251-70	Contractor Employee Travel Discounts (Aug 2009)	
I.137	970.5204-1	Counterintelligence (Dec 2010)	
I.138	970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution (Dec 2000)	
I.139	970.5223-3	Agreement Regarding Workplace Substance Abuse Programs At DOE Facilities (DEC 2010)	
I.140 I.139	970.5223-4	Workplace Substance Abuse Programs at DOE Sites (Dec 2010)	
I.141 I.140	970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (Oct 2010)	
I.142 I.141	970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)	
I.143 I.142	970.5227-1	Rights in Data-Facilities (Dec 2000)	
I.144 I.143	970.5227-4	Authorization and Consent (Aug	

		2002)	
I.145 <u>I.144</u>	970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002)	
I.146 <u>I.145</u>	970.5227-6	Patent Indemnity-Subcontracts (Dec 2000)	
I.147 <u>I.146</u>	970.5227-8	Refund of Royalties (Aug 2002)	
I.148 <u>I.147</u>	970.5227-10	Patent Rights –Management and Operating Contracts, Non-Profit Organization or Small Business Firm Contractor (Aug 2002)	
I.149 <u>I.148</u>	970.5227-11	Patent Rights Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (Dec 2000)	

CLAUSES INCORPORATED IN FULL TEXT

I.150I.149 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

- (a) The Contractor shall make the following notifications in writing:
 - (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall -
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

I.151I.150 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:
 It is not a Wage Determination*

Employee Class	Monetary Wage -- Fringe Benefits
Administrative Assistant	18.84
Carpenter	22.39
Computer Operator	16.95
Computer Programmer	18.84
Electrician	23.87
Engineering Technician	15.21
Environmental Technician	18.84
Forklift Operator	16.78
Guard	15.21
Heavy Equipment Operator	23.87
HVAC	23.87
Instrument Mechanic	23.87
Janitor	12.17
Laborer	13.88
Machinist	23.87
Motor Vehicle Operator	23.87
Painter	22.39
Pipefitter	23.87
Receiving Clerk	15.34
Secretary	15.21
Technical Instructor	18.84
Technical Writer	23.04
Truck Driver	19.78
Warehouse Specialist	16.78
Water Treatment Operator	22.39
Welder	23.87

The fringe benefit rate is \$4.02/hour which is in addition to the above hourly rates.

~~I.152~~I.151 **FAR 52.223-9, ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (MAY 2008)**

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

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

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

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to the Contracting Officer.

~~I.153~~I.152 **52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)**

(a) Definition. “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning: Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

~~I.154~~I.153 **52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR**

**AUDIT (FEB
2006)**

- (a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid –
- (1) By the Contractor under a cost-reimbursement contract; and
 - (2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (c) Contractors shall submit the above referenced transportation documents to:

General Services Administration
Attn: FWA
1800F Street NW
Washington, DC 20405

~~I.155I.154~~ **952.242-70 TECHNICAL DIRECTION (DEC 2000)**

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Providing direction to the Contractor that redirects contract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual SOW.
 - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the DOE.

- (b) The Contractor will receive a copy of the written COR designation from the CO. It will specify the extent of the COR's authority to act on behalf of the CO.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the SOW;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) Changes contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform to the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the CO in writing within five working days after receipt of any such instruction or direction and must request the CO to modify the contract accordingly. Upon receiving the notification from the Contractor, the CO must:
 - (1) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the Contractor in writing within a reasonable time that the DOE will issue a written change order; or
 - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and CO either to agree that the technical direction is

within the scope of the contract or to agree upon the contract action to be taken with respect the technical direction will be subject to the provisions of the clause in Section I, 52.233-1 "Disputes."

~~1561.155~~ **970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (~~JUL-~~
~~2005~~OCT 2014)**

~~-(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."~~ ~~Government owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the contract.~~

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and nonemployee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE-5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14), Personnel Medical Records (DOE-33), Employee Assistance Program (EAP) Records (DOE-34) and Personnel Radiation Exposure Records (DOE-35).

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(e) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that contain the *Integration of Environment, Safety and Health into Work Planning and*

~~Execution clause at 952.223-71 or, the Radiation Protection and Nuclear Criticality clause at 952.223-72.~~

~~(b) Contractor owned records. The following records are considered the property of the Contractor and are not within the scope of paragraph (a) of this clause. [The Contracting Officer shall identify which of the following categories of records will be included in the clause.]~~

~~(1) Employment related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health related records and similar files), and non-employee-patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.~~

~~(2) Confidential contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);~~

~~(3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and~~

~~(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and~~

~~(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:~~

~~(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.~~

~~(ii) The Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.~~

~~(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.~~

~~(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor owned records identified in paragraph (b) of this clause, upon the~~

~~request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.~~

~~(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.~~

~~(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.~~

~~(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. In addition, the Contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.~~

~~(g) Subcontracts. The Contractor shall include the requirements of this clause in all subcontracts that are of a cost reimbursement type if any of the following factors is present:~~

~~(1) The value of the subcontract is greater than \$2 million (unless specifically waived by the Contracting Officer);~~

~~(2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or~~

~~(3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.~~

The following clauses only apply to the CONSTRUCTION scope of the Contract (PWS Sections C.3.2.02; C.3.2.03; C.3.2.04; C.4.3.01; C.4.3.06; C.4.3.07; C.6.3.01; and C.7.1.06):

CLAUSES INCORPORATED BY REFERENCE

I.157 I.156	52.222-6	Construction Wage Rate Requirements (May 2014)
I.158 I.157	52.222-7	Withholding of Funds (May 2014)
I.159 I.158	52.222-8	Payrolls and Basic Records (May 2014)
I.160 I.159	52.222-9	Apprentices and Trainees (Jul 2005)
I.161 I.160 1988)	52.222-10	Compliance with Copeland Act Requirements (Feb 1988)
I.162 I.161	52.222-11	Subcontracts (Labor Standards) (May 2014)
I.163 I.162	52.222-12	Contract Termination – Debarment (May 2014)
I.164 I.163	52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014)
I.165 I.164	52.222.14	Disputes Concerning Labor Standards (Feb 1988)
I.166 I.165	52.222-15	Certification of Eligibility (May 2014)
I.167 I.166	52.222-16	Approval of Wage Rates (May 2014)
I.168 I.167	52.222-27	Affirmation Act Compliance Requirements for Construction (Feb 1999)

CLAUSES INCORPORATED BY FULL TEXT

~~I.169~~I.168 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

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

“Caribbean Basin country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

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

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and

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

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

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or 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.

“Cost of components” means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic: or
 - (ii) The construction material is a COTS item.

“Free Trade Agreement country construction material means” a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

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

“Least developed country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

“WTO GPA country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

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

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: none. [*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. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

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

(c) Request for determination of inapplicability of the Buy American Statute.

(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;

(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 (whether or not a duty-free certificate may be issued).

(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 the Buy American statute 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 the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(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 and any applicable duty (whether or not a duty-free entry certificate is issued).]