

IDAHO ENVIRONMENTAL COALITION, LLC

SUPPLEMENTAL PROVISIONS FOR COST REIMBURSEMENT (CR) CONTRACT TYPE

1. **DEFINITIONS** – See General Provisions
2. **ORDER OF PRECEDENCE** – See General Provisions
3. **CONTRACT TYPE**

The contract type is identified and provided on the face of this Order. The provisions that pertain to the contract type identified will be the basis for performance administration. The Company will make payments to the Subcontractor in amounts determined to be allowable by the Company in accordance with the terms of this Order.

3.1 FAR 52.216-8 Fixed Fee (Jun 2011), Modified

- 3.1.1 **Fixed Fee Value.** The [Company] shall pay the [Subcontractor] for performing this [Order] the fixed fee specified in the compensation schedule.
- 3.1.2 **Fixed Fee Payment.** Payment of the fixed fee shall be made as specified in the compensation schedule; provided, that after payment of 85 percent of the fixed fee, the [Company] may withhold further payment of fee until a reserve is set aside in an amount that the [Company] considers necessary to protect the [Company's] or Government's interest. This reserve shall not exceed 15 percent of the total fixed fee, or \$100,000, whichever is less. The [Company] shall release 75 percent of all fee withholds under this [Order] after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this [Order], provided the [Subcontractor] has satisfied all other [Order] terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final invoices on prior years' settlements. The [Company] may release up to 90 percent of the fee withholds under this [Order] based on the [Subcontractor's] past performance related to the submission and settlement of final indirect cost rate proposals.

3.2 FAR 52.216-10 Incentive Fee (Jun 2011), Modified

- 3.2.1 **Incentive Fee Value.** The [Company] shall pay the [Subcontractor] for performing this [Order] a fee determined as provided in this [Order].
- 3.2.2 **Target Cost and Target Fee.** The target cost and target fee specified in the compensation schedule are subject to adjustment if the [Order] is modified based on equitable adjustment.
 - 3.2.2.1 Target Cost, as used in this [Order], means the estimated cost of this [Order] as initially negotiated and in accordance with any applicable equitable adjustments.
 - 3.2.2.2 Target Fee, as used in this [Order], means the fee initially negotiated on the assumption that this [Order] would be performed for a cost equal to the estimated cost initially negotiated and in accordance with any applicable equitable adjustments.
- 3.2.3 **Withholding of Fee Payment.** Normally, the [Company] shall pay the fee to the [Subcontractor] as specified in the [Order]. However, when the [Company] considers that performance or cost indicates that the [Subcontractor] will not achieve target cost and/or schedule, the [Company] shall pay on the basis of an appropriate lesser fee.

- 3.2.3.1 When the [Subcontractor] demonstrates that performance or cost clearly indicates that the [Subcontractor] will earn a fee significantly above the target fee, the [Company] may, at the sole discretion of the [Company], pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the [Company] may withhold further payment of fee until a reserve is set aside in an amount that the [Company] considers necessary to protect the [Company]'s or Government's interest. This reserve shall not exceed 15 percent of the applicable fee, or \$100,000, whichever is less. The [Company] shall release 75 percent of all fee withholds under this [Order] after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this [Order], provided the [Subcontractor] has satisfied all other [Order] terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final invoices on prior years' settlements. The [Company] may release up to 90 percent of the fee withholds under this [Order] based on the [Subcontractor's] past performance related to the submission and settlement of final indirect cost rate proposals.
- 3.2.4 **Equitable Adjustments.** When the Work under this [Order] is increased or decreased by an amendment to this [Order] or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in an amendment to this [Order].
- 3.2.5 **Fee Payable.** The fee payable under this [Order] shall be in accordance with the compensation schedule.
- 3.2.5.1 The fee shall be subject to adjustment, to the extent provided in accordance with equitable adjustments, and within the minimum and maximum fee limitations in this Article, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required.
- 3.2.5.2 If this [Order] is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this Article. The termination shall be accomplished in accordance with other applicable clauses of this [Order].
- 3.2.5.3 For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of:
- (1) Any of the causes covered by excusable delays to the extent that they are beyond the control and without the fault or negligence of the [Subcontractor] or any Lower-tier [Subcontractor];
 - (2) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the [Subcontractor] being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (3) Any direct cost attributed to the [Subcontractor's] involvement in litigation as required by the [Company] pursuant to a clause of this [Order], including furnishing evidence and information requested pursuant to the notice and assistance regarding Patent and copyright infringement provision;
 - (4) The purchase and maintenance of additional insurance not in the target cost and required by the [Company], or claims for reimbursement for liabilities to third persons pursuant to the insurance liability clause;
 - (5) Any claim, loss, or damage resulting from a risk for which the [Subcontractor] has been relieved of liability by the Government Property clause; or

- (6) Any claim, loss, or damage resulting from a risk defined in the [Order] as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the [Subcontractor].
- (7) All other allowable costs are included in “total allowable cost” for fee adjustment.

3.2.6 **Order Amendment.** The total allowable cost and the adjusted fee determined as provided in this provision shall be evidenced by an amendment to this [Order] signed by the [Subcontractor] and the [Company].

3.2.7 **Inconsistencies.** In the event of any language inconsistencies between this clause and provisioning documents or the [Company] options under this [Order], compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this provision.

3.3 FAR 52.216-11 Cost Contract – No Fee (Apr 1984), Modified

3.3.1 **Fee Payable.** The [Company] shall not pay the [Subcontractor] a fee for performing this [Order].

3.3.2 **Cost-Reimbursement Payment.** After payment of 80 percent of the total estimated cost shown in the compensation schedule, the [Company] may withhold further payment of allowable cost until a reserve is set aside in an amount that the [Company] considers necessary to protect the [Company’s or] Government’s interest. This reserve shall not exceed one percent of the total estimated cost shown in the compensation schedule or \$100,000, whichever is less.

4. CHANGES/MODIFICATIONS

4.1 Change Terms

4.1.1 The Company’s SA or the Company’s Subcontract Manager are the only individuals authorized to bind the Company contractually in performance of Work under this Order.

4.1.2 Any failure by Subcontractor to assess requirements described in the Work shall not be accepted as a basis for entitlements to an equitable adjustment pursuant under this Article.

4.1.3 No Subcontractor claim is allowed after final payment under this Order.

4.1.4 The Subcontractor shall continue performing Work while any Subcontractor Modification request is pending. However, the Subcontractor shall not start the additional Work until the Company provides written approval.

4.1.5 If the Work is reduced by modification, such action will not constitute a claim for damages based on loss of anticipated profits. However, failure to agree to any adjustment shall be a dispute within the meaning of the Article of these General Provisions entitled “Disputes.”

4.1.6 Nothing herein will be construed as relieving Subcontractor of its obligations to perform, including without limitation, the failure of the Parties to agree upon Subcontractor entitlement to, or the amount of, any adjustment in price or period of performance.

4.1.7 The Company shall not be liable for, and Subcontractor hereby waives, any claim or potential claim in which Subcontractor did not report a modification in accordance with the provisions of this Article.

4.1.8 Except as may be expressly set forth in this Order and with the government contracting officer's express consent, this Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

4.2 Changes – Cost-Reimbursement (Aug 1987), Modified

(a) The [Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this [Order] in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the [Company] in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the [Company] shall make an equitable adjustment in the –

- (1) Estimated cost, delivery, or completion schedule, or both;
- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the subcontract accordingly.

(c) The [Subcontractor] must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. [Subcontractor shall submit an Information Review/Change Order (“IRCO Form”), FRM-2210]. However, if the [Company] decides that the facts justify it, the [Company] may receive and act upon a proposal submitted before final payment of the [Order].

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the [Subcontractor] from proceeding with the subcontract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this [Order] and, if this [Order] is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the [Order] indicating the new [Order] estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the [Order]. Until this modification is made, the [Subcontractor] shall not be obligated to continue performance or incur costs beyond the point established in the limitation of cost or limitation of funds clause of this [Order].

Alternate I (Apr 1984). If the requirement is for services and no Goods are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The [Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

Alternate II (Apr 1984). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The [Company] may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this [Order] in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).

- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the [Company] in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

4.3 Material/Equipment Changes

- 4.3.1 No substitutions to Goods shall be made in this Order without the prior written consent of the Company.
- 4.3.2 The Company shall have the right by written direction to make changes to the specification and drawings for goods or services covered by this Order.
- 4.3.3 If Subcontractor believes that such change affects the price or delivery date for such goods or services, Subcontractor shall so notify Company in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Subcontractor shall suspend performance of the change unless thereafter released in writing by Company to perform said change, and Company and Subcontractor shall mutually agree in writing upon an equitable adjustment in the Price and/or delivery date to reflect the effect of such change.
- 4.3.4 Subcontractor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Subcontractor receives direction to make such changes. Subcontractor shall not suspend performance of the unaffected portion of this Order while Company and Subcontractor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Company. If released in writing by the Company, Subcontractor shall comply with and perform such changes in accordance with the terms of this Order during the time Subcontractor and Company require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Order shall be binding upon Company nor will extra compensation be paid by Company unless the agreement or understanding is made in writing.

4.4 Subcontractor Change Request

- 4.4.1 Subcontractor may submit an IRCO Form if Subcontractor knows or should have known of a change, revision, addition, or deletion of the Work, Subcontractor shall give the Company written notice within five (5) calendar days after the happening of any event which Subcontractor believes may give rise to an adjustment in Price, schedule or any other terms or conditions.
- 4.4.2 Upon receipt of the IRCO Form, the Company shall review and submit it to the DOE for approval, if applicable. Any Price or Schedule adjustment granted to Company by DOE relating to the Work, is a condition precedent to any obligation by Company to sign a change/modification.
- 4.4.3 If DOE approves the Modification request, Company shall issue a written Modification to this Order which will be effective once signed by both Parties. If DOE does not approve the Modification Request, the Company, at its sole discretion, may sign a written modification.

4.5 Delays and Extension of Time

- 4.5.1 If the Subcontractor intends to file a claim for a time extension for a delay, it will, within forty-eight (48) hours of the occurrence, give written notice of the claim to the Company's SA stating the circumstances, the possible extension involved, and the reasons for the claim.
- 4.5.2 Within seven (7) calendar days after the cause of delay has been remedied, the Subcontractor will give written notice to the Company's SA of the actual time extension requested.

- 4.5.3 Within fifteen (15) calendar days after the Subcontractor submits to the Company's SA a specific written request for a time extension, the Company will make the final decision on the request for a time extension.
- 4.5.4 No time extension will be considered for weather conditions in the area in which the Work is being performed unless determined by the Company's STR to warrant such extension. Unusual weather conditions, if determined by the Company to be of a severity that would stop all progress of the Work, may be considered as cause for a time extension.
- 4.5.5 Delays in delivery of equipment or material purchased by the Subcontractor or its Lower-tier Subcontractors (including Company-selected equipment) or failure of the Subcontractor or its Lower-tier Subcontractors to perform will not be considered as a just cause for a delay unless the Company was responsible for causing the delay rather than the Subcontractor. The Subcontractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials, unless the Company caused impact beyond the Subcontractor's control.

5. PRIME CONTRACT TERMS AND CONDITIONS

In addition to the Prime Contract Flowdown Clauses, the following Prime Contract clauses are hereby incorporated by reference into this Order and shall be in full force unless an exception applies, otherwise noted below, or otherwise specified in the clause.

Prime Contract Clause No.	FAR/DEAR Reference	Title
E.1.2	52.246-3	Inspection of Supplies – Cost-Reimbursement (May 2021)
E.1.4	52.246-5	Inspection of Services – Cost-Reimbursement (Apr 1984)
F.1.4	52.242-15	Stop-Work Order (Aug 1989) – Alternate I (Apr 1984)
H.54	N/A Full Text Below	Subcontractor Timekeeping Records Signature Requirement
I.41	52.215-23 Full Text Below	Limitations on Pass-Through Charges (Jun 2020) (applies to contracts over \$250,000)
I.42	52.216-7	Allowable Cost and Payment (Aug 2018), as modified by DEAR 952.216-7
I.43	52.216-8 Full Text Above	Fixed Fee (Jun 2011)
I.44	52.216-10 Full Text Above	Incentive Fee (Jun 2011)
I.45	52.216-11	Cost Contract-No Fee (Apr 1984) (applies to contracts without fee)
I.57	52.222-2	Payment for Overtime Premiums (Jul 1990) (applies to non-CPIF) Fill-In Info: (a) zero
I.136	52.232-22	Limitation of Funds (Apr 1984)
I.172	52.243-2 Full Text Above	Changes – Cost-Reimbursement (Aug 1987) – Alt I (Apr 1984), Alt II (Apr 1984), Alt III (Apr 1984)
I.186	52.247-67	Submission of Transportation Documents for Audit (Feb 2006)

	Full Text Below	
I.193	52.249-14	Excusable Delays (Apr 1984)
I.195	52.251-2	Interagency Fleet Management System Vehicles and Related Services (Jan 1991)
I.217	952.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (Dec 2012)

6. FULL TEXT BELOW CLAUSES

6.1 Substitution of the Parties

Wherever required to make any FAR clause incorporated herein meaningful, the term “Contractor” shall be read “Subcontractor,” the term “Administrative Contracting Officer” or “ACO” shall be read “Subcontracts Administrator”, “SA”, or “Buyer”, the term “Head of the Contracting Activity” shall be read “Supply Chain Manager” - and the term “Government” or “Contracting Officer” shall be read “Subcontracts Administrator”, “SA”, or “Buyer”.

6.2 (H.54) Subcontractor Timekeeping Records Signature Requirement

The Contractor shall obtain timecards for all hourly subcontract employees, at all tiers, performing on non-fixed-price subcontracts. For purposes of this Clause, non-fixed-price subcontracts are those of a type containing a cost reimbursable or variable component in them, which includes those contract types covered by FAR Subpart 16.3, Cost Reimbursement Contracts, FAR Section 16.405, Cost Reimbursement Incentive Contracts, and FAR Subpart 16.6, Time and Materials, Labor Hour, and Letter Contracts. Note that the requirements of this Clause also pertain to Task Orders, tasks, and/or Contract Line Items Numbers from Indefinite Delivery (see FAR Subpart 16.5, Indefinite Delivery Contracts) and hybrid contracts that are of a type covered by the FAR citations in the prior sentence. The timecards must be obtained by the Contractor prior to the Contractor paying for these subcontract costs and prior to billing DOE for these costs. The timecards must reflect actual hours worked, be signed by the subcontract employee, and be certified by the subcontract employees’ supervisor prior to the Contractor obtaining them. subcontractors at all tiers performing work under non-fixed-price subcontracts shall maintain adequate timekeeping procedures, controls, and processes for billing Government work. The Contractor shall, at least once every three years, conduct a labor audit of non-fixed-price subcontracts. The audit shall be conducted to unmodified Institute of Internal Auditors standards, if conducted internally, or unmodified Generally Accepted Government Auditing Standards (GAGAS), if conducted externally. This Clause shall be flowed down to all non-fixed-price subcontracts at all tiers.

6.3 (I.41) FAR 52.215-23 Limitation of Pass-Through Charges (Jun 2020)

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

Added value means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

Excessive pass-through charge, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

No or negligible value means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

Order means any contract, as defined in Federal Acquisition Regulation (FAR) [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor, as defined in FAR [44.101](#), means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General*. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting*. Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if-

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges*. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart [31.2](#); and

(2) For applicable DoD fixed-price contracts, as identified in [15.408\(n\)\(2\)\(i\)\(B\)](#), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records*.

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR [52.215-2\(a\)](#)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR [52.215-2\(a\)](#)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, as defined in FAR [2.101](#) on the date of subcontract award, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in FAR [15.408\(n\)\(2\)\(i\)\(B\)\(2\)](#), that exceed the threshold for obtaining cost or pricing data in FAR [15.403-4](#) on the date of subcontract award.

6.4 (I.186) FAR 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 subcontractors 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.

END OF SUPPLEMENTAL PROVISIONS COST REIMBURSEMENT (CR) CONTRACT TYPE