

Selected Provisions from BPA Grant No. 44790

(A copy of BPA Grant No. 44790 is available from NEEA¹ upon request)

1. This grant incorporates by reference 2 CFR Part 230, Cost Principles for Non-Profit Organization (formerly OMB Circular A-122), and 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions for Higher Education, Hospitals, and Other Non-Profit Organizations (formerly OMB Circular A-1 10).

SELECTED TERMS AND CONDITIONS

CLAUSE 4-1 REGULATIONS APPLICABLE TO BPA FINANCIAL ASSISTANCE (BFAI 4.10) (SEP 04)

The Bonneville Power Administration's financial assistance function is managed and executed solely in accordance with the Bonneville Financial Assistance Instructions (BFAI). The BFAI is available without charge on the Internet at <http://www/bpa.gov>. Copies of the BFAI may be obtained for \$15.00 each. Requests and comments should be sent to Head of the Contracting Activity - GK, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208. Subscriptions are not available.

CLAUSE 4-2 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (BFAI 4.10) (SEP 04)

The recipient shall comply with 10 CFR Chapter II, Section 600.39 which provides that "...no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from ..." BPA.

CLAUSE 4-3 EXAMINATION OF RECORDS (BFAI 4.10) (SEP 04)

- (a) The recipient shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this award. The Financial Assistance Officer or a representative shall have the right of access to any books, documents, papers, or other records of recipients and subrecipients which are pertinent to the award, in order to make audits, examinations, excerpts and transcripts.
- (b) Such material shall be made available at the office of the recipient, at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment under this award or for such longer period, if any, as is required by applicable statute. If any litigation, claim, negotiation, audit or other action involving the records has been started prior to the expiration of the 3 year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3 year period whichever is later.

CLAUSE 4-21M REQUIREMENT FOR AUDIT (BFAI 4.10)(SEP 09)

The recipient is required to obtain an audit in accordance with OMB Circular A-133. Copies of the report, including

¹ Contact legal@neea.org or (503) 688-5400

the management letter ("Letter to the Board of Directors"), shall be provided to the Board of Directors and funders by August 1 of each year.

**CLAUSE 17-2 PATENT RIGHTS
(SEP 98)(BPI 17.3.5.1)**

(a) Definitions.

- (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (2) "Made," when used in relation to any invention, means the conception or first actual reduction to practice of such invention.
- (3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 12 CFR 121.3-12, respectively, will be used.
- (6) "Subject invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this grant.

(b) Allocation of principal rights. The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by recipient.

- (1) The Recipient will disclose each subject invention to BPA within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the recipient will promptly notify BPA of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.
- (2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying BPA within 2 years of disclosure to the agency. However, in any case where publication, or sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by BPA to a date that is no more than 60 days prior to the end of the statutory period.

- (3) The recipient will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title, or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c) (1), (2), and (3) of this clause may, at the discretion of BPA, be granted.
- (d) Conditions when the government may obtain title. The Recipient will convey to BPA, upon written request, title to any subject invention-
- (1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that BPA may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.
 - (2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, 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 BPA, the Recipient shall continue to retain title in that country.
 - (3) In any country in which the Recipient decided 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.
- (e) Minimum rights to recipient and protection of the Recipient right to file.
- (1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the recipient fails to disclose the invention within the times specified in paragraph (c) of this clause. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sub licenses of the same scope to the extent the Recipient was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of BPA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.
 - (2) The Recipient's domestic license may be revoked or modified by BPA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of BPA to the extent the Recipient, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (3) Before revocation or modification of the license, BPA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by BPA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and BPA regulations, if any, concerning the licensing revocation or modification of the license.
- (f) Recipient action to protect the government's interest.
- (1) The Recipient agrees to execute or to have executed and promptly deliver to BPA all instruments necessary to-

- (A) Establish or confirm the rights the government has throughout the world in those subject inventions to which the Recipient elects to retain title, and
- (B) Convey title to BPA when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

- (2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters, and in a format suggested by the Recipient, each subject invention made under grant in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent application prior to U.S. or foreign statutory bars.
- (3) The recipient will notify BPA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "The invention was made with Government support under (identify the grant) awarded by U.S. Dept. of Energy, Bonneville Power Administration. The Government has certain rights in the invention."

(g) Subcontracts.

- (1) The Recipient will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Recipient in this clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- (2) The Recipient will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work, a patent rights clause.
- (3) In the case of subcontractors, at any tier, BPA, the subcontractor, and the Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Recipient agrees to submit, on request, periodic reports (no more frequently than annually) on the utilization of subject inventions or on efforts to obtain such utilization instigated by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as BPA may reasonably specify. The Recipient also agrees to provide such additional reports as may be requested by BPA in connection with any march-in proceeding undertaken by BPA in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), BPA agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by BPA upon a showing

by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

- (j) March-in rights. The Recipient agrees that, with respect to any subject invention in which it has acquired title, BPA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of BPA to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request, that BPA has the right to grant such a license itself if BPA determines that-
- (1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special provisions for grants with nonprofit organizations. If the Recipient is a nonprofit organization, it agrees that-
- (1) Rights to a subject invention in the United States may not be assigned without the approval of BPA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the recipient;
 - (2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
 - (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision of whether or not to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants. The Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

**CLAUSE 17-3 RIGHTS IN DATA
(OCT 05)(BPI 17.4.2.1; 17.4.3.1)**

- (a) Allocation of rights. Except as otherwise provided in this clause, BPA shall have the right to use, disclose,

reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so, in--

- (1) All data first produced in the performance of this grant; and
- (2) Data delivered under this grant (except for proprietary computer software) that constitute manuals or instructional and training material for installation, operation or routine maintenance and repair of items, components, or processes delivered or furnished for use under this grant.

(b) Copyright.

- (1) Data First Produced in the Performance of the Grant. The Recipient may establish claim to copyright subsisting in any data first produced in the performance of this grant. The Recipient grants to the Government, and others acting on its behalf, a paid-up non-exclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (2) Data Not First Produced in the Performance of this Grant. The recipient should not, without prior written permission of the Financial Assistance Officer, incorporate in data delivered under this grant any data not first produced in the performance of this grant and which contains a copyright notice, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (b)(1) of this clause;

(c) Release, publication and use of data.

- (1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this grant, unless otherwise expressly set forth in this grant.
- (2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this grant which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Financial Assistance Officer.

(d) Omitted or incorrect markings. Data delivered to BPA without a limited rights notice or a copyright notice shall be deemed to have been furnished with unlimited rights, and BPA assumes no liability for the disclosure, use, or reproduction of such data.

(e) Protection of limited rights data and proprietary computer software. If the Offeror/Recipient desires to protect data and computer software that embody trade secrets or are commercial or financial and confidential or privileged, that are specified to be delivered under this grant, the Offeror/Recipient shall identify such data and computer software to the Financial Assistance Officer as limited rights data. Limited rights data that are formatted as a computer data base for delivery to BPA are to be treated as limited rights data and not proprietary computer software. All markings to proprietary computer software must be in human-readable form that can be readily and visually perceived and in addition may be in machine-readable form as appropriate and feasible under the circumstances. These markings must be affixed by the recipient to the proprietary computer software before its delivery to BPA. The Financial Assistance Officer may require the delivery of such limited rights data and computer software. If delivery of such data and computer software is so required, the Recipient may affix the following "Limited Rights Notice" to the data, and BPA will thereafter treat the data and computer software in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under BPA Grant No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that BPA may disclose these data outside the Government for the

following purposes, if any, provided that BPA makes such disclosure subject to prohibition against further use and disclosure: (COs may list additional purposes or if none, so state).

- (b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of Notice)

- (f) Subcontracting. The Recipient has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Recipients obligations to BPA under this grant. If a subcontractor refuses to accept terms affording BPA such rights, the Recipient shall promptly bring such refusal to the attention of the Financial Assistance Officer, and shall not proceed with subcontract award without further authorization.
- (g) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

CLAUSE 3-3 CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 98)(BPI 3.5.6)

- (a) As used in this clause:

"Covered Federal action" means

- (1) The awarding of any Federal contract.
- (2) The extension, continuation, renewal, amendment, or modification of any Federal contract.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and includes Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, includes a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal

contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract or the extension, continuation, renewal, amendment, or modification of any Federal contract.
- (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
- (3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.

(e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(f) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

**CLAUSE 3-6 DRUG-FREE WORKPLACE
(SEP 98)(BPI 3.6.4)**

- (a) The contractor agrees that with respect to all employees to be employed under this contract it will provide a drug-free workplace as described in this clause.
- (b) Definitions. As used in this clause "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), as from time to time amended, and as further defined in regulation at 21 CFR 1308.11-1308.15, as amended.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employees who have other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (c) The Contractor, if other than an individual, shall -- within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration--
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an on-going drug-free awareness program to inform such employees about--
 - (A) The dangers of drug abuse in the workplace;
 - (B) The contractor's policy of maintaining a drug-free workplace;
 - (C) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (D) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (c)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by subparagraph (c)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

- (A) Abide by the terms of the statement; and
 - (B) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.
- (5) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subdivision (c)(4)(B) of this clause, from an employee, or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subparagraph (c)(4)(B) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
- (A) Taking appropriate personnel action against such employee, up to and including termination; and/or
 - (B) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (c)(1) through (c)(6) of this clause.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (c) of this clause may, pursuant to BPI 3.6.3 render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

