

Attachment D

“FLOW-DOWN” CLAUSES APPLICABLE TO PURCHASE ORDERS OR AGREEMENTS INVOLVING FUNDS FROM A FEDERAL GRANT

This Agreement/Order involves the use of funds from a Federal government grant or cooperative agreement—or funds from a subcontract at any tier relating to a Federal government grant or cooperative agreement—and the following clauses from the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”), Appendix II are incorporated into and form a part of the terms and conditions of the Agreement/Order. The full text of the Uniform Guidance may be found at 2 CFR Part 200. Seller/Vendor agrees to flow down all applicable clauses from the Uniform Guidance to lower-tier subcontractors.

Seller/Vendor further agrees to comply with all applicable agency-specific terms and conditions, which may be found by selecting the applicable agency’s procurement website at [Acquisition.gov](https://www.acquisition.gov), and shall flow down all applicable clauses to lower-tier subcontractors.

- 1. Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, for all Orders that qualify as “federally assisted construction contracts” as defined in 41 CFR Part 60–1.3, Seller agrees to comply with the equal opportunity clause under 41 CFR 60-1.4(b), incorporated herein by reference, and E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- 2. Davis Bacon Act, as amended (40 U.S.C. 3141—3148).** If the Order is in excess of \$2,000 and pertains to construction or repair, and further, if required by Federal program legislation, Seller shall comply with the Davis-Bacon Act (40 U.S.C. 3141 - 3144 and 3146-3148) and as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, Seller is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Seller shall be required to pay wages not less than once a week.
- 3. Copeland “Anti-Kickback” Act (40 U.S.C. 3145).** If the Order is in excess of \$2,000 and pertains to construction or repair, Seller shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides in part that Seller shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which it is otherwise entitled.
- 4. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Order is in excess of \$100,000 and involves the employment of mechanics or laborers, Seller shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Seller shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 5. Bayh-Dole Act (35 U.S.C. 200-212).** If the Order is for the performance of experimental, developmental, or research work, under a “funding agreement” under 37 CFR 401.2(a) Seller shall provide for the rights of the Federal Government and Harvard in any resulting invention in accordance with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and comply with the requirements of 37 CFR Part 401 and any implementing regulations issued by the awarding agency.

6. **Clean Air Act (42 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251—1387), as amended.** If the Order is in excess of \$150,000 Seller shall comply with all applicable standards, Orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251—1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. **Energy Policy and Conservation Act (42 U.S.C. 6201).** Seller agrees to comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
8. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** If the Order is for \$100,000 or more, Seller and its subcontractors shall file the certification required by this statute and associated regulations. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Harvard.
9. **Debarment and Suspension (E.O.s 12549 and 12689).** Seller represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

Seller must comply with 2 CFR Part 180, Subpart C and must include a requirement to comply with this regulation in any lower tier covered transaction it enters into.

Seller shall have an ongoing duty during the term of this Agreement to disclose to Harvard on an ongoing basis any occurrence that would prevent Seller from making the certifications contained in this Section 9. Such disclosure shall be made in writing to Harvard within five (5) business days of when Seller discovers or reasonably believes there is a likelihood of such occurrence.

This certification is a material representation of fact relied upon by Harvard. If it is later determined that Seller did not comply with 2 CFR Part 180, Subpart C, in addition to remedies available to Harvard, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.

10. **Procurement of recovered materials.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. If applicable, Seller shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
11. **Domestic preferences for procurements (2 CFR 200.322).** As appropriate and to the extent consistent with law, the Seller should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section 11 must be included in all subawards including all contracts and purchase orders for work or products under this Order.

For purposes of this section:

- i. “Produced in the United States” means, for iron and steel products, that all manufacturing processes from the initial melting stage through the application of coatings, occurred in the United States.
- ii. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321). Vendor shall take affirmative steps to include minority businesses, women’s business enterprises, and labor surplus area firms when possible by:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in steps a. through e. of this Section 12.

13. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Seller shall not obligate or expend funding provided under this Order to:

- i. Procure or obtain;
- ii. Extend or renew a contract to procure or obtain; or
- iii. Enter into a contract (or extent or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - b. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

CONFLICTS AMONG CLAUSES APPLICABLE TO THE ORDER

In the event of any conflict among the requirements of clauses applicable to the Order, the most stringent requirements of the clauses will apply.