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the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act, (40 U.S.C. 3131 et al), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owed for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

(Name) \_\_\_\_\_
(Street Address) \_\_\_\_\_
(City, State, Zip Code) \_\_\_\_\_
(Contact & Tel. No.) \_\_\_\_\_

(End of clause)

1252.231-70 Date of incurrence of costs.

As prescribed in (TAR) 48 CFR 1231.205-32(b), insert the following clause:

DATE OF INCURRENCE OF COSTS (OCT 1994)

The Contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

1252.235-70 Research misconduct.

As prescribed in (TAR) 48 CFR 1235.7000, insert the following clause:

RESEARCH MISCONDUCT (APR 2005)

(a) Definitions. As used in this clause—

Adjudication means the process of reviewing recommendations from the investigation phase and determining appropriate corrective actions.

Complainant is the person who makes an allegation of research misconduct or the person who cooperates with an inquiry or investigation.

DOT Oversight Organization is the DOT operating administration or secretarial office

sponsoring or managing Federally funded research.

Evidence includes, but is not limited to, research records, transcripts, or recordings of interviews, committee correspondence, administrative records, grant applications and awards, manuscripts, publications, expert analyses, and electronic data.

Fabrication is making up data or results and recording or reporting them.

Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Inquiry is preliminary information gathering and fact finding to determine if an allegation, or apparent instance of research misconduct, warrants an investigation.

Investigation is formal collection and evaluation of information and facts to determine if research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Research misconduct does not include honest error or differences of opinion.

Research and Technology Coordinating Council (RTCC) is the lead DOT entity for coordination of all actions related to allegations of research misconduct. The respondent in a research misconduct finding may appeal through the RTCC to the Deputy Secretary of Transportation.

Research Institution includes any contractor conducting research under DOT funded contractual instruments, agreements and similar instruments.

Research misconduct means fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research, or in reporting research results.

Research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

Respondent is the person against whom an allegation of research misconduct has been made, or the person whose actions are the focus of the inquiry or investigation.

(b) General guidelines—(1) Confidentiality. DOT organizations, including research organizations, are required to safeguard the confidentiality of the inquiry, investigation and decision-making processes, including maintaining complete confidentiality of all records and identities of respondents and complainants.

(2) Retaliation prohibited. If a complainant who has reported possible research misconduct alleges retaliation on the part of

DOT organization management, the report will be addressed by management officials who will conduct an inquiry into the allegations followed by an appropriate management action.

(3) *Separation of phases.* DOT organizations and research organizations must ensure the separation of the Inquiry, Investigation and Determination Phases of this process.

(4) In general, DOT organizations must strive to protect the interests of the Federal Government and the public in carrying out this process.

(c) *Elements to support a finding of research misconduct.* Research institutions (including contractors) that receive Department of Transportation (DOT) funds shall respond to allegations of research misconduct. The following elements describe the type of behavior, level of intent and burden of proof required to support a finding of research misconduct:

(1) There must be a significant departure from the accepted practices of the relevant research community;

(2) The misconduct must have been committed intentionally, or knowingly, or recklessly and;

(3) The allegation must be proven by a preponderance of the evidence.

(d) *DOT Oversight Organization Investigation.* The DOT oversight organization may proceed with its own investigation at any time if:

(1) DOT determines the institution is not prepared to handle the allegation in a manner consistent with this policy;

(2) DOT involvement is needed to protect the public interest, including public health and safety;

(3) The allegation involves an entity of sufficiently small size (or an individual) that it cannot sufficiently conduct the investigation itself.

(4) The DOT oversight organization may take, or cause to be taken, interim administrative actions (including special certifications, assurances, or other administrative actions) when deemed appropriate to protect the welfare of human and animal subjects of research, prevent inappropriate use of Federal funds, or otherwise protect the public interest and safety.

(e) *Investigating research misconduct.* Research Institutions, or in limited circumstances discussed in Section b, the DOT Oversight Organization, shall use the following procedures to investigate allegations of research misconduct:

(1) Inquire promptly into the research misconduct allegation and complete an initial inquiry within 60 calendar days after receipt of the allegation.

(2) Notify the contracting officer immediately, in writing, when an inquiry results in a determination that an investigation is

warranted, and promptly begin an investigation.

(3) Ensure the objectivity and expertise of the individuals selected to review allegations and conduct investigations.

(4) Conduct the investigation according to established internal procedures and complete it within 120 calendar days of completing the initial inquiry.

(5) Document the investigation. Include documentation that:

(i) Describes the allegation(s);

(ii) Lists the investigators;

(iii) Describes the methods and procedures used to gather information and evaluate the allegation(s);

(iv) Summarizes the records and data compiled, states the findings, and explains the supporting reasons and evidence;

(v) States the potential impact of any research misconduct; and

(vi) Describes and explains any institutional sanctions or corrective actions recommended, or imposed as appropriate within its jurisdiction and as consistent with other relevant laws.

(6) Provide the respondent (the person against whom an allegation of research misconduct has been made) with a reasonable opportunity (e.g., 30 calendar days) to review and respond to the investigation report. The respondent's written comments or rebuttal will be made part of the investigative record.

(7) Within 30 calendar days after completion of an investigation, forward investigative reports, documentation, and respondent's response to the contracting officer who will coordinate with the oversight organization(s) sponsoring and/or monitoring the federally funded research.

(8) Time extensions. Contractors should request time extensions as needed, from the contracting officer of the appropriate DOT oversight organization. The contracting officer has discretion to waive time requirements for good cause.

(f) *Activity sanctions or corrective actions.* Upon receipt of the investigative reports from the contractor, the DOT oversight organization, in conjunction with the contracting officer, will review the report and determine the appropriate administrative action to be taken. In deciding what actions to take, the oversight organizations should consider: the severity of the misconduct; the degree to which the misconduct was knowing, intentional or reckless; and whether it was an isolated event or part of a pattern. Sanctions or corrective actions may range as follows:

(1) *Minimal restrictions*—such as a letter of reprimand, additional conditions on awards, requiring third-party certification of accuracy or compliance with particular policies, regulations, guidelines, or special terms and conditions;

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(2) *Moderate restrictions*—such as limitations on certain activities or expenditures under an active award, or special reviews of requests for funding;

(3) *More severe restrictions*—such as termination of an active award, or government-wide suspension or debarment.

(i) When the DOT oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent that a finding of research misconduct has been made.

(ii) If there are reasonable indications that criminal violations may have occurred, the DOT oversight organization shall consult with the Office of Inspector General to determine an appropriate course of action, including disbarment or suspension. The DOT oversight organization will notify the respondent in writing of its action, sanctions to be imposed if applicable, and the DOT appeal procedures.

(g) *Appeals and Final Administrative Action.*

(1) The Federal Acquisition Regulation (FAR) governs in all matters pertaining to termination of the contract, and suspension/debarment.

(2) In all other cases, the contractor may appeal the sanction or corrective action through the DOT Research and Technology Coordinating Council (RTCC) to the Deputy Secretary of Transportation, in writing within 30 calendar days after receiving written notification of the research misconduct finding and associated administrative action(s). The contractor shall mail a copy of the appeal to the contracting officer.

(3) If there is no request for appeal within 30 calendar days, the administrative actions of the oversight organization shall be final.

(4) If a request for appeal is received by the RTCC within the 30 calendar day limit, the Deputy Secretary may have the RTCC review the appeal and make recommendations.

(5) The RTCC on behalf of the Deputy Secretary will normally inform the appellant of the final decision on an appeal within 60 calendar days of receipt. This decision will then be the final DOT administrative action.

(h) *Criminal or Civil Fraud Violations.* When the oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent. If criminal or civil fraud violations may have occurred, the oversight organization should promptly refer the matter to the DOT Inspector General, the Department of Justice or other appropriate investigative body.

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(End of clause)

**1252.236-70 Special precautions for work at operating airports.**

As prescribed in (TAR) 48 CFR 1236.570, insert the following clause:

SPECIAL PRECAUTIONS FOR WORK AT OPERATING AIRPORTS (OCT 1994)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for