

EXHIBIT O

GOVERNMENT CLAUSES FAR PROVISIONS

1. Gratuities.

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -
- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to enter into a business arrangement or obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction. (c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled-
- (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee.
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, the project documents, or the contract.

2. Covenant Against Contingent Fees.

(a) The Contractor warrants that no person or agency has been employed or retained to solicit, enter into a business arrangement or obtain a contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to terminate the business arrangement or annul the contract without liability or, in its discretion, to deduct from the consideration or contract price, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit, enter into a business arrangement or obtain Government contracts nor holds itself out as being able to enter into a business arrangement or obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit, enter into a business arrangement or obtain Government contracts nor holds itself out as being able to enter into a business arrangement or obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in entering into a business arrangement or securing a Government contract. .

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a business arrangement or a Government contract on any basis other than the merits of the matter.

3. Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

Sec. 51. - Short title. Sections 51 to 58 of this title may be cited as the "Anti-Kickback Act of 1986"

Sec. 52. - Definitions. As used in sections 51 to 58 of this title:

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- (1) The term "contracting agency", when used with respect to a prime contractor, means any department, agency, or establishment of the United States which enters into a prime contract with a prime contractor.
- (2) The term "kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (3) The term "person" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (4) The term "prime contract" means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (5) The term "prime contractor" means a person who has entered into a prime contract with the United States.
- (6) The term "prime contractor employee" means any officer, partner, employee, or agent of a prime contractor.
- (7) The term "subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (8) The term "subcontractor" - (A) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (B) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.
- (9) The term "subcontractor employee." means any officer, partner, employee, or agent of a subcontractor

Sec. 53. - Prohibited conduct. It is prohibited for any person

- (1) to provide, attempt to provide, or offer to provide any kickback;
- (2) to solicit, accept, or attempt to accept any kickback; or
- (3) to include, directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

Sec. 54. - Criminal penalties. Any person who knowingly and willfully engages in conduct prohibited by section 53 of this title shall be imprisoned for not more than 10 years or shall be subject to a fine in accordance with title 18, or both.

Sec. 55. - Civil actions.

- (a) (1) The United States may, in a civil action, recover a civil penalty from any person who knowingly engages in conduct prohibited by section 53 of this title. The amount of such civil penalty shall be - (A) twice the amount of each kickback involved in the violation; and (B) not more than \$10,000 for each occurrence of prohibited conduct.
- (2) The United States may, in a civil action, recover a civil penalty from any person whose employee, subcontractor or subcontractor employee violates section ~of this title by providing, accepting, or charging a kickback. The amount of such civil penalty shall be the amount of that kickback.
- (b) A civil action under this section shall be barred unless the action is commenced within 6 years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, and (2) the date on which the United States first knew or should reasonably have known that the prohibited conduct had occurred.

Sec. 56. - Administrative offsets

- (a) Offset authority. A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section ~of this title against any moneys

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owed by the United States to the prime contractor under the prime contract to which such kickback relates.

(b) Duties of prime contractor. (1) Upon direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against that prime contractor under subsection (a) of this section. (2) Such contracting officer may order that sums withheld under paragraph (1) - (A) be paid over to the contracting agency; or (B) if the United States has already offset the amount of such sums against that prime contractor, be retained by the prime contractor. (3) The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (2)(B).

(c) Claim of Government. An offset under subsection (a) of this section or a direction or order of a contracting officer under subsection (b) of this section is a claim by the Government for the purposes of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(d) "Contracting officer" defined. As used in this section, the term "contracting officer" has the meaning given that term for the purposes of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)

Sec. 57. - Contractor responsibilities

(a) Procedural requirements for prevention and detection of violations

Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall have in place and follow reasonable procedures designed to prevent and detect violations of section ~of this title in its own operations and direct business relationships. (b)

Cooperation in investigations requirement

Each contracting agency shall include in each prime contract awarded by such agency a requirement that the prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 21 - of this title.

(c) Reporting requirement; supplying information as favorable evidence of responsibility. (1) (A) Whenever a prime contractor or subcontractor has reasonable grounds to believe that a violation of section 53 of this title may have occurred, the prime contractor or subcontractor shall promptly report the possible violation in writing. (B) A contractor shall make the reports required by subparagraph (A) to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice. (2) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, evidence that such person has supplied information to the United States pursuant to paragraph (1) shall be favorable evidence of such person's responsibility for the purposes of Federal procurement laws and regulations.

(d) Partial inapplicability to small contracts

Subsections (a) and (b) of this section do not apply to a prime contract that is not greater than \$100,000 or to a prime contract for the acquisition of commercial items (as defined in section 403(12) of this title).

(e) Cooperation in investigations regardless of contract amount

Notwithstanding subsection (d) of this section, a prime contractor shall cooperate fully with any Federal Government agency investigating a violation of section 21-ofthis title.

Sec. 58. - Inspection authority. For the purpose of ascertaining whether there has been a violation of section 21-ofthis title with respect to any prime contract, the General Accounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of such agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency. This section does not apply with respect to a prime contract for the acquisition of commercial items (as defined in section 403(12) of this title).

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Davis-Bacon Act (40 use 276a-276a-5).

Sec. 276a. - Rate of wages for laborers and mechanics

(a) The advertised specifications for every contract in excess of \$2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid

shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) As used in sections 276a to 276a-5 of this title the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include

(1) the basic hourly rate of pay; and

(2) the amount of - (A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and (B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits: Provided, That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as sections 276a to 276a-5 of this title and other Acts incorporating sections 276a to 276a-5 of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2). In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under sections 276a to 276a-5 of this title, such regular or basic

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hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs, actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater. Sec. 276a-1. - Termination of work on failure to pay agreed wages; completion of work by Government. Every contract within the scope of sections 276a to 276a-5 of this title shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby. Sec. 276a-2. - Payment of wages by Comptroller General from withheld payments; listing contractors violating contracts

(a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to sections 276a to 276a-5 of this title; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to sections 276a to 276a-5 of this title, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

Sec. 276a-3. - Effect on other Federal laws. Sections 276a to 276a-5 of this title shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

Sec. 276a-4. - Effective date of sections 276a to 276a-5. Sections 276a to 276a-5 of this title shall take effect thirty days after August 30, 1935, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding on August 30, 1935.

Sec. 276a-5. - Suspension of sections 276a to 276a-5 during emergency. In the event of a national emergency the President is authorized to suspend the provisions of sections 276a to 276a-5 of this title.

5. Disputes Concerning Labor Standards.

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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6. Federal Acquisition Regulation (FAR) 52.215-2 (Audit and Records-Negotiations).

7. FAR 52.222-8 Payrolls-and Basic Records. (Feb 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section I (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section I (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the

Superintendent of Documents U.S.
Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized

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representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12."