

CLAUSE I-75 – LOWER-TIER SUBCONTRACTS (COST-REIMBURSEMENT AND LETTER SUBCONTRACTS)
(August 2002)

- (a) "Lower-tier subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Subcontractor shall notify the Subcontracting Officer reasonably in advance of entering into any lower-tier subcontract if –
- (1) The proposed lower-tier subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;
 - (2) The proposed lower-tier subcontract is fixed-price and exceeds either \$25,000 or 5 percent of the total estimated cost of this subcontract;
 - (3) The proposed lower-tier subcontract has experimental, developmental, or research work as one of its purposes; or
 - (4) This subcontract is not a facilities subcontract and the proposed lower-tier subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or of any items of facilities.
- (b) (1) In the case of a proposed lower-tier subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$10,000, including any fee, (ii) is proposed to exceed \$550,000, or (iii) is one of a number of lower-tier subcontracts with a single lower-tier subcontractor, under this subcontract, for the same or related supplies or services that, in the aggregate, are expected to exceed \$550,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.
- (2) (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of lower-tier subcontract, to be used.
 - (iii) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained.
 - (iv) The proposed lower-tier subcontract price and the Subcontractor's cost or price analysis.
 - (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
 - (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.
 - (vii) A negotiation memorandum reflecting –
 - (A) The principal elements of the lower-tier subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade off possibilities considered.
- (c) The Subcontractor shall obtain the Subcontracting Officer's written consent before placing any lower-tier subcontract for which advance notification is required under paragraph (a) above. However, the Subcontracting Officer may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the Subcontracting Officer.
- (d) If the Subcontractor has an approved purchasing system and the lower-tier subcontract is within the scope of such approval, the Subcontractor may enter into the subcontracts described in subparagraphs, (a)(1) and (a)(2) above without the consent of the Subcontracting Officer, unless this contract is for the acquisition of major systems, subsystems, or their components.
- (e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the Subcontracting Officer's written consent before placing lower-tier subcontracts that have been selected for special surveillance and identified in the Schedule of this contract.

- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Subcontracting Officer to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the allowability of any cost under this subcontract, or (3) to relieve the Subcontractor of any responsibility for performing this subcontract.
- (g) No lower-tier subcontract placed under this subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in paragraph 15.903(d) of the Federal Acquisition Regulation (FAR).
- (h) The Subcontractor shall give the Subcontracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from SURA.
- (i) (1) The Subcontractor shall insert in each price redetermination or incentive price revision lower-tier subcontract under this subcontract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 5.216-5, Price Redetermination--Prospective, 52.216-6, Price Redetermination- -Retroactive, 52.216-16, Incentive Price Revision--Firm Target, or 52.216-17, Incentive Price Revision--Successive Targets, as appropriate, modified in accordance with the paragraph entitled "Lower-tier subcontracts" of that clause.
(2) Additionally, the Subcontractor shall include in each cost-reimbursement lower-tier subcontract under this subcontract a requirement that the lower-tier subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower-tier price redetermination or incentive price revision lower-tier subcontract under the lower-tier subcontract.
- (j) To facilitate small business participation in lower-tier subcontracting, the Subcontractor agrees to provide progress payments on lower-tier subcontracts under this subcontract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Subcontractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of lower-tier subcontracts.
- (k) SURA reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.