



USAID Nepal Flood Recovery Program
Subcontracting Guidelines
Revised May 2011



USAID Nepal Flood Recovery Program
SMR House
43/15 Dandibaba Marg, Tangal
Kathmandu-2, Nepal
Tel: 977-1-441-4162
E-mail: info@nfrp.org

List of Acronyms

ADS	Automated Directive System
AIDAR	AID Acquisition Regulation
CFR	Code of Federal Regulations
CBO	Community Based Organization
CIRIS	Client Impact and Results Information System (Fintrac M&E System)
CO	Contracting Officer
COP	Chief of Party
COTR	Contract Officer Technical Representative
FAR	Federal Acquisition Regulation
IEE	Initial Environmental Examination
IR	Intermediate Result
LIG	Livelihood and Income Generating Activities
LPC	Local Peace Committee
M&E	Monitoring and Evaluation
MSME	Micro, Small and Medium-Size Enterprise
NFRP	Nepal Flood Recovery Program
NGO	Non-Governmental Organization
RCO	Regional Contracting Officer
RFTOP	Request for Task Order Proposal
SO	Strategic Objective
USAID	United States Agency for International Development
VDC	Village Development Committee

Table of Contents

Revision (May 2011)	1
A. Introduction.....	1
B. General Description of USAID/NFRP Subcontracts	1
C. Subcontract Objectives.....	2
D. Illustrative Activities	2
E. Environmental Analysis.....	3
F. Subcontract Format.....	3
G. Client and Partner Contributions.....	4
H. Subcontract Procedures	4
H.1 Selection Criteria.....	4
H.2 Competition.....	5
H.3 Conflict of Interest	5
H.4 Environmental Impact Analysis	6
H.5 Subcontract Elements	7
H.6 USAID/NFRP Approval	8
H.7 USAID/Nepal CO Approval (if required)	8
I. Subcontract Administration	9
J. Monitoring and Reporting	10
K. Amendments and Extensions	10
L. Other Subcontractor Responsibilities	10
M. Special Provisions.....	11
M.1 Salary Supplementation.....	11
M.2 Prohibition of Assistance to Drug Traffickers (ADS 206.5.9)	11
M.3 Certification Regarding Terrorism Financing Activities	11
N. Templates.....	12
N.1 Request for Subcontract Approval.....	12
N.2 Subcontract Template	15
N.3 Negotiation Memorandum.....	25
N.4 Environmental Analysis.....	33
N.5 Key Individual Certification Concerning Narcotics Offenses and Drug Trafficking	38
N.6 Certification Regarding Terrorism Financing	39
N.7 Template for Subcontract modification	41

Revision (April 2011)

The Subcontracting manual has been updated based on the Phase III revision of the USAID/NFRP program and its extension to four years and new geographic areas. Guidelines and templates for NFRP staff who are working with contractors have been simplified and if necessary expanded. In particular the sections on the Environmental Assessment and the template for the subcontract itself were changed.

A. Introduction

The Nepal Flood Recovery Program (USAID/NFRP) is a 4-year USAID-funded initiative created to provide disaster recovery assistance in Nepal's Terai and Hill regions. The program is implemented by Fintrac Inc., a U.S. agribusiness firm, along with local partner METCON Consultants and other local and international organizations working in the Terai and Hill. USAID/NFRP activities include:

- a) Investing in rehabilitated and improved community infrastructure;
- b) Improving livelihoods by increasing productivity and living standards through income-generating activities;
- c) Raising health standards by training communities in improved sanitation and nutrition practices;
- d) Increasing local capacity through the participation of Local Peace Committees (LPCs) and other Community-Based Organizations (CBOs) in community development activities;
- e) Outreach and awareness campaigns for the protection of women and children;
- f) Other initiatives as determined feasible by USAID/NFRP technicians and management.

B. General Description of USAID/NFRP Subcontracts

USAID/Nepal anticipated the use of subcontracts under USAID/NFRP as per the RFTOP and subsequent task order award to Fintrac, Inc. Subcontracts shall be implemented in accordance with Section A.16 of the USAID/NFRP Task Order award (Order #EDH-I-04-05-00007-00) and AIDAR. Specifically, the following conditions will be met:

- The USAID COTR and CO will approve all subcontracts that exceed 5% of the project budget. As of December 10, 2009 USAID has approved a threshold of US \$325,000 for subcontracts,
- The contractor will ensure that the requirements that apply to USAID-executed contracts also apply to subcontracts signed by Fintrac, the USAID prime contractor for this project.

In addition, the contractor shall allow USAID the following rights:

- To conduct a financial review, require an audit or otherwise ensure adequate accountability of organizations expending USAID funds regardless of the audit requirement.
- To require termination of any subcontract in extraordinary circumstances.

The contractor shall review each subcontractor's organizational capacity prior to executing a subcontract. This will include an assessment of the capacity of each subcontractor to carry out services to be provided under its subcontract, including management, reporting and internal controls.

C. Subcontract Objectives

Preference will be given to subcontracting local organizations and firms in order to leverage technical expertise in small-scale engineering, agriculture, sanitation, etc. as well as financial resources through in-kind contributions and investments from counterparts and beneficiaries.

Subcontracts are therefore a key program tool for leveraging the technical and financial resources necessary to meet the goals of USAID/NFRP, namely: improving living standards; raising health and education standards; improve and/or replacing damaged community infrastructure; increasing local organizational and governance capacity; and introducing measures to reduce the impact of future disasters in the Terai.

D. Illustrative Activities

Subcontracts will be used to increase program outreach through use of firms and organizations with demonstrated experience in program component areas. Emphasis will be placed on activities that build the capacity of local community-based organizations to ensure the sustainability of program interventions.

Subcontracts will be used to carry out the following activities in targeted regions of the Terai. Examples of subcontract activities may include, but are not limited to:

- **Engineering and reconstruction projects** – including small-scale construction and rehabilitation of drinking water sources; river embankments; irrigation systems; schools and health posts; and sanitation facilities:
 - Construction of drinking water sources and supply lines to improve access to safe water;
 - Repair and reinforcement of river embankments to mitigate erosion and reduce damage to households and farms;
 - Repair and/or new construction of village-level irrigation structures, including the creation of small-scale drip irrigation systems (and related inputs) to benefit farming communities;
 - Construction of sanitation facilities such as community latrines with washing stations.
 - Re-construction or new construction of community infrastructure such as schools, market sheds, health posts and agricultural processing and storage facilities.
- **Training and sensitization activities** – including agriculture and other income-generating activities; disaster preparedness and mitigation; health and sanitation; and the protection of women and children:
 - Agriculture production and postharvest handling through village demonstration sites, emphasizing use of improved inputs and technologies; Good Agricultural Practices (GAPs) such as Integrated Pest Management (IPM) and Farm Chemical Safety (FCS), as well as other income generating activities;
 - Disaster preparedness and mitigation such as basic steps to protect homes and farms during floods and other precautions such as emergency food & water storage;
 - Health and sanitation training such as measures to prevent diarrhea and other sicknesses through improved hygienic practices, as well as family nutrition through household kitchen gardens;
 - Protection of women and children and other gender issues through targeted education and awareness campaigns.

A core element of USAID/NFRP's technical approach is the programming of training and sensitization activities that are complementary to engineering and construction efforts. For example, health and sanitation education and awareness campaigns will target communities where latrines and washing stations are planned for construction, and so on.

E. Environmental Analysis

All subcontract activities will be evaluated to ensure compliance with best environmental practices and the parameters established in USAID's Initial Environmental Examination (IEE) for the USAID/Nepal's Flood Recovery Program, approved April 16, 2008.

Given the small-scale of program interventions, environmental impact is anticipated to be minimal to none for most USAID/NFRP activities, while many others will yield positive environmental benefits.

The IEE included an evaluation of the environmental impact potential for each of the program's six components:

- 01: Rehabilitation and rebuilding of productive infrastructure
- 02: Provision of income generation activities
- 03: Improved sanitation, hygiene and nutrition
- 04: Strengthening of Local Peace Committees and other local organizations
- 05: Protection of Women and Children
- 06: Windows of Opportunity

Categorical exclusion from environmental monitoring and evaluation was recommended for project components 03 through 06, while mitigation and reporting were required for components 01 and 02.

Accordingly, each subcontract activity from all 6 components will be evaluated by Program technicians using Attachment 04: Environmental Analysis Form, which includes criteria specific to program interventions under components 01 and 02. During the implementation NRFP Program technicians and the subcontractor shall monitor activities according to the Environmental Assessment. If necessary the Environmental Assessment should be updated and mitigation measurements should be implemented in case of a negative impact on the environment. The NRFP technician should provide guidance on appropriate mitigation activities.

F. Subcontract Format

Subcontracts under USAID/NFRP will be made utilizing a **fixed price** mechanism. Fixed price subcontracts will be made directly with organizations by USAID/NFRP for the provision of services to program beneficiaries. Each fixed price subcontract will include the following sections:

Signatory Page – contract value, effective date, principal signatures

Part I – Terms of Reference

- a) Background
- b) Scope of Work
- c) Period of Performance
- d) Deliverables
- e) Reporting and Technical Direction
- f) Amendments

Part II – Subcontract Value
 Part III – Invoicing
 Part IV – Payments
 Part V – Personnel Status
 Part VI – Data Ownership
 Part VII – Conflict of Interest
 Part VIII – Termination
 Part IX – Legal Agreement
 Part X – Subcontractor Responsibilities
 Part XI – Contractor Responsibilities and Authority
 Part XII – Special Provisions
 Part XIII – Clauses Incorporated by Reference

Attachment 1 – Key Individual Certification Concerning Narcotics Offences and Drug Trafficking
 Attachment 2 – Certification Regarding Terrorism Financing
 Attachment 3 – Environmental Assessment

Further Attachments starting as ‘Attachment 4’ can include: detailed budget, technical proposal, further technical and financial guidelines

See Section N.2 in this document for the subcontract template to be utilized under USAID/NFRP.

G. Client and Partner Contributions

Fintrac will seek in-kind contributions from client and counterpart organizations in order to broaden the outreach and impact of USAID/NFRP activities. Examples of in-kind contributions to be leveraged through USAID/NFRP subcontract activities may include:

- For **engineering & construction services**, contributions in the form of labor for reconstruction activities, food for work contributions, equipment/material contributions, and others.
- For **training, education and awareness activities**, subcontractor organizations (such as NGOs operating in the Terai and Hills) may provide additional human or other resources (transportation, per diem, inputs, training materials) to broaden the scope of a training campaign to additional communities, especially where there is a recognition of shared goals between Fintrac and the subcontractor’s organizational mission, and it is in the interest of the subcontractor to provide such contributions.

The value of anticipated in-kind contributions will be indicated in the subcontract budget, and actual contributions recorded in Fintrac’s M&E system.

H. Subcontract Procedures

Subcontractor activities will vary in scope and nature according to the services to be provided. Each will support one (or more) USAID/NFRP component and it is important to justify how the scope of the subcontract contributes to one or more of the components are the entire NFRP project.

H.1 Selection Criteria

All USAID/NFRP subcontract activities are required to:

- Be results-driven with strong contribution to meeting USAID/NFRP goals;
- Be cost effective and realistic;
- Present minimal or positive impact on the local environment (See Attachment 4: Environmental Analysis Form);
- Incorporate gender concerns; and
- Contribute to the long-term sustainability of program interventions.

H.2 Competition

Subcontract awards will be made on a competitive basis following an evaluation of the capacity of prospective subcontractors to carry out services that support USAID/NFRP goals. In Phase I a part of the sub-contractors have been pre-qualified through baseline surveys. In the following phases the competition is open to all organizations. In addition the NFRP team will seek information from national and local authorities, bi-lateral and multi-lateral donors and other implementing international and national NGOs.

Criteria for the selection of subcontracts under USAID/NFRP are as follows:

- Updated legal registration and audited financial statements
- Familiarity with the geographic region of the proposed activity
- Ability to travel to and operate in the targeted geographic region
- Past performance in delivering similar services
- Professional and Technical qualifications.
- Management capacity
- Financial capacity and conditions
- Cost reasonableness of the proposed budget
- After sale service arrangements
- Ability to report on progress and deliverables
- Willingness to be monitored by program staff
- Willingness to comply with all subcontract clauses and certifications
- Connection and networking with local authorities and other development partners
- Experience in good environmental practices
- Not having any punishment for committed professional offences

All subcontracts will be executed in accordance with sound business practices and all applicable U.S. government regulations. If deemed necessary, Fintrac will conduct a performance assessment of prospective subcontractor firms and organizations. All information shall be held in strict confidence to protect the privacy and integrity of prospective subcontractors.

H.3 Conflict of Interest

Appropriate steps shall be taken to ensure that members of the USAID/NFRP subcontracts committee and any program staff involved in the review/approval process have no conflict of interest, or the appearance of such, with regard to subcontracts. An individual shall be considered to have the appearance of a conflict of interest if that person, or that person's spouse, partner, child, close friends or relatives, work for, or are negotiating to work for, or have a financial interest (including being an unpaid member of a Board of Directors) in any organization or firm under consideration for a subcontract. In such cases, the committee shall carefully review the situation and, if necessary, consult Fintrac's CFO and Senior VP

International Operations to determine the appropriate action required to avoid or mitigate such conflict of interest and ensure impartiality during the evaluation process.

Fintrac and USAID/NFRP staff shall neither solicit nor accept gratuities, favors, or anything of monetary value from proposed subcontractors.

H.4 Environmental Impact Analysis

Program technicians will analyze each subcontract activity **prior to the award** in accordance with best environmental practices, as well as the determinations and conditions of USAID's Initial Environmental Examination (IEE) for USAID/NFRP. Since the IEE determined that "small scale construction, rehabilitation, and repairs, and some technical training areas, qualify for **Negative Determination with Conditions** per 216.3 (a)(2)(iii), the **Conditions** are that:

1. These activities meet or exceed the requirements of the National Environmental Policies and Procedures of the Government of Nepal (GON) [Nepal has enforced [accepted?] the Environmental Impact Assessment Guidelines 1993; Environmental Protection Act 1997; Environmental Protection Rules 1997 and the Guidelines Act, Rules and other regulations provide basic legal framework for all environmental assessment in Nepal. (IEE p.6)]
2. No hazardous materials such as asbestos, lead-based paints, chlorine gas, and toxic solvents shall be used to the extent feasible
3. Only certified wood and no illegal timber shall be used; where feasible, aluminum, glass, steel, plastic wood and other recycled materials rather than new wood shall be used
4. If pesticides, including fumigants, are procured, used, and disposed, a Pesticide Evaluation Report and Safe Use Action Plan (PERSUAP) and an Integrated Pest Management (IPM) plan shall be prepared and approved by the Bureau Environmental Officer (BEPO) prior to procurement, per 22 CFR 216.3(b), pesticide procedures
5. Mitigation measures shall be undertaken during land preparation and construction to control and reduce soil erosion, construction dust and debris, noise and traffic, and debris and waste shall be minimized and disposed properly
6. Construction activities shall be alert for historically and culturally significant artifacts and properly reported to authorities if found
7. Developing of water supplies shall first be studied for its potential adverse impact on the already obligated [stressed] water supply
8. Drinking water sources shall be tested prior to use to assure they meet drinking water standards, especially for arsenic and bacteria
9. sound principles of environmental management, including manure management, agricultural chemical management, and medical materials waste management and disposal, shall be implemented
10. To the extent feasible, integrated pest management, integrated solid waste management, and resource recovery, reuse, recycling and composting shall be encouraged
11. To the extent feasible, program activities shall conform to the U.S. Green Building Council (USGBC) standards and guidelines for Leadership in Energy and Environmental Design (LEED – www.usgbc.org/LEED) , especially for water, wastewater, storm water, and energy for use, reuse, and efficiency, as applicable to rehabilitation, new construction, and open areas, and consistent with U.S. President Executive Orders for Sustainable Design, Green Building and Energy Efficient Products (www.ofee.gov)
12. As feasible, care shall be exercised to reduce the carbon emissions to air from rehabilitation, construction, maintenance, and operation activities

13. A performance monitoring plan shall be prepared and implemented to comply with this Environmental Threshold Decision (ETD) and its approved IEE and shall be monitored and evaluated periodically by the USAID General Development Office (GDO) Team.

As applicable these conditions will be reported in the USAID/NFRP Quarterly Performance Reports. Mitigation measures will be submitted to the Evaluation Committee for its consideration and will be included in the Request for Approval sent to USAID for each subcontract. Copies of all Environmental analyses will be kept on file at the USAID/NFRP Program office, and electronic copies posted on the program's Intranet site, accessible to USAID/NFRP and USAID/Nepal staff. The assessment and necessary mitigation guidelines will be provided to the subcontractor at the time of the award. During implementation it is the responsibility of the subcontractor and the designated NFRP person to make sure that these guidelines are followed. If necessary the Environmental Assessment needs to be updated the subcontractor should inform NFRP and revise the Environmental Assessment. Mitigation and further guidelines will be provided by NFRP.

The NFRP team will follow the same procedures if the subcontract does not need an approval by USAID.

Environmental analyses will be completed following site visits by the program's engineer, agronomist, or other technicians. Approval for each subcontract activity will be provided only against a determination that the subcontract activity will result in minimal environmental impact, no impact at all, or positive environmental benefit. In rare cases where minimal impact is anticipated, the assessment will include proposed mitigation measures.

It is anticipated that most community infrastructure activities will result in no impact given their small-scale (and the fact that many projects will consist of repair to structures already in existence). Most USAID/NFRP income generation activities will generate positive environmental benefits through the introduction and promotion of sustainable practices such as:

- Low cost drip irrigation;
- Proper land preparation;
- Use of organic fertilizer (livestock manure, composting);
- Crop rotation which will help break pest cycles;
- Integrated Pest Management including the use of live crop barriers, non-chemical pest traps, and biological control alternatives, where appropriate and feasible

In addition, no agrochemicals or non-organic fertilizers will be purchased under USAID/NFRP subcontracts.

See Attachment 04 for specific criteria to be used during environmental evaluation, mitigation and monitoring, based on the recommendations of the IEE.

H.5 Subcontract Elements

Following a determination of the subcontractor's ability to deliver the described services, and USAID/NFRP and USAID CO approval, a subcontract document will be prepared as described in Section F.

All subcontracts will include Terms of Reference (TOR) that identify the services/activities to be performed, along with a timeline of activities, budget and schedule of deliverables to be

provided. The subcontract will contain deliverables that are realistic and measurable for which the subcontractor will be held accountable.

USAID may require Fintrac to terminate subcontracts unilaterally in extraordinary circumstances. Accordingly, every subcontract shall include a termination clause that allows for (1) mutual termination in writing by both parties and (2) unilateral termination by Fintrac in the event that USAID (i) terminates the USAID/NFRP program, (ii) reduces the USAID/NFRP program budget (or fails to provide incremental program funding), or (iii) requires Fintrac to otherwise terminate the subcontract (or any group of subcontracts).

Upon preparation of the subcontract document, a signature shall be obtained from the subcontractor's designated representative, and the document countersigned by Fintrac/USAID/NFRP. Signed copies of these documents shall be placed on file at the USAID/NFRP office and made available to program and USAID staff via the USAID/NFRP Intranet site.

H.6 USAID/NFRP Approval

All subcontract activities are subject to evaluation by a committee of USAID/NFRP staff. Only those activities meeting the committee's approval will be submitted to USAID/NFRP Program Director for final approval.

Subcontract activities will be screened by a committee consisting of: (1) the USAID/NFRP Technical Team; (2) the USAID/NFRP Financial Manager; and (3) Fintrac's Home Office Program Manager for USAID/NFRP, in order to ensure that they meet the minimum eligibility requirements, are financially sound, and that the proposed activity poses no significant negative environmental impact. Once eligibility is determined, the committee will determine the activity's contribution to program goals. An evaluation may entail interviews, site visits, background research, and/or solicitation of additional information, including relevant technical and budget information to ensure that proposed costs are reasonable and allowable.

To the extent necessary, the subcontracts committee may perform a cost analysis prior to executing a subcontract in order to determine:

- The subcontractor's understanding of the financial aspects of the services/activities to be undertaken;
- Its ability to perform the services/activities within the proposed budget and timeframe;
- Any special conditions related to the successful delivery of services (i.e., availability of construction materials, security in the proposed activity areas, weather considerations, etc.);
- The reasonableness of proposed costs, and evidence that they are allowable.

In some instances, the subcontractor may be required to modify or clarify its proposal and/or budget. In these cases USAID/NFRP staff will work with the subcontractor to revise the proposal as required. If significant technical or budgetary changes are needed, the revised proposal will be reviewed and evaluated once again by the subcontracts committee. All subcontractors are required to complete the Certification Regarding Narcotics Offenses (Section N.5) and Certification Regarding Terrorism Financing (Section N.6).

H.7 USAID/Nepal CO Approval (if required)

Only subcontracts that exceed the simplified acquisition threshold of currently \$325,000 or the equivalent amount in NRP are required to get an approval by the USAID Contracting Officer. Regardless of this requirement the procedures to select, approve and justify each subcontractor remain the same and should be recorded in NFRPs files. Each subcontract shall undergo the same level of scrutiny and due diligence as those that will require approval from USAID.

For subcontracts valued about the threshold, the USAID/NFRP committee shall prepare a written memorandum to the USAID COTR/CO requesting his/her approval for the proposed subcontract(s). The request shall include a brief description of the services/activities being proposed along with their expected contribution towards USAID/NFRP goals.

The following items will be submitted to USAID when requesting subcontract(s) approval:

1. Request for Subcontract Approval (Section N.1)
 - a) Summary
 - b) Description
 - c) Selection Criteria
 - d) Budget
 - e) Payment Information
2. Subcontract (Section N.2)
3. Negotiation Memorandum (Section N.3)
 - f) Justification
 - g) Description
 - h) Budget review
 - i) Duration
 - j) Competitive / Noncompetitive award justification
 - k) Statement that requirements applicable to USAID contractors shall also apply to program subcontractors (flow through)
4. Environmental Analysis (Section N.4)
5. Certification Concerning Narcotics Offenses and Drug Trafficking (Section N.5)
6. Certification Regarding Terrorism Financing Activities (Section N.6)

A subcontract activity request for approval package is not complete unless all of the above is included. The USAID CO must approve each subcontract activity prior to its execution, and may request additional information from the contractor prior to subcontract approval. In the interest of achieving agreed upon results for the benefit of flood affected villages as quickly as possible, Fintrac has proposed for USAID consideration of the option: "subcontract approval by "no objection" after five (5) work days."

I. Subcontract Administration

The specific nature and extent of USAID/NFRP subcontract administration will vary by activity, but will generally include technical oversight through site visits and reporting, as well as other monitoring of deliverables. An orientation between the subcontractor and USAID/NFRP will be carried out for each subcontract in order to clarify the roles and responsibilities of the individuals administering the subcontract. USAID/NFRP shall serve as the control point for all subcontractor administration.

Subcontractors shall be subject to the provisions established and included in their respective subcontracts. USAID/NFRP will ensure that subcontracts do not contain clauses that conflict

with USAID regulations and policies. USAID/NFRP shall process all award modification, suspension and termination actions, subject to written pre-approval by USAID.

J. Monitoring and Reporting

Site visits are an important part of effective subcontractor management and will be carried out on a regular basis by USAID/NFRP staff. All subcontractors will be subject to regular and periodic monitoring visits and reporting requirements, as per the terms of their subcontracts. Site visits will also be coordinated for USAID and other USG staff upon request. A record of all site visits by USAID/NFRP technicians will be included in the program's M&E system.

All subcontractors will submit a final report at the conclusion of each subcontract to be kept on file at the USAID/NFRP office.

K. Amendments and Extensions

Fintrac has the authority to make, without prior USAID approval, written amendments to awarded subcontracts, provided that the amendments (1) are of a minor or administrative nature, (2) do not change the value, purpose or use of funds of any subcontract, (3) do not eliminate or reduce the authority of any standard or special provisions or any other regulation or policy, (4) are satisfactory to the subcontractor, and (5) are promptly transmitted to USAID.

Approval of the USAID/NFRP Program Director is required for amendments that involve any substantial change, extension or expansion of subcontract services. If the new total budget of the subcontract exceeds \$325,000 NFRP will seek USAID approval for a modification. The USAID/NFRP Program Director shall also serve as the mandatory control point of record for all communication regarding subcontract amendments. Amendments will be made by formal modifications to the basic subcontract document, with signed copies included on file and posted to the USAID/NFRP Intranet.

Please refer to Section N.7 for further guidance and a template for modifications.

L. Other Subcontractor Responsibilities

The subcontractor has full responsibility for its conduct and adherence to the terms and conditions outlined in its subcontract. Although the subcontractor is encouraged to seek the advice and opinion of the USAID/NFRP Program Director on special problems that may arise, such advice does not diminish the recipient's responsibility for making sound technical and administrative judgments, and should not imply that the responsibility for operating decisions has shifted to the USAID/NFRP Program. The subcontractor is responsible for immediately notifying USAID/NFRP regarding any problems that may inhibit its ability to provide the deliverables required under its subcontract.

All subcontracts will contain a clause indicating that the provisions and clauses applying to Fintrac through its contract with USAID shall also apply to the subcontractor. These clauses will be incorporated by reference in each subcontract.

The subcontractor is responsible to monitor the environmental impact of activities and if necessary mitigate impact according to USAID/NFRP guidelines.

Fintrac will preserve all records with respect to its subcontracting (including technical, cost and negotiation factors) and administration hereunder. All records will be retained for a period of five years.

M. Special Provisions

All subcontracts will be subject to the following Special Provisions:

M.1 Salary Supplementation

No funds provided under this award shall be used to make any payments to government employees, without prior written approval of Fintrac and USAID.

M.2 Prohibition of Assistance to Drug Traffickers (ADS 206.5.9)

Fintrac and/or USAID reserve the right to terminate subcontracts, demand refund of funds paid, or take other appropriate measures if the subcontractor is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking, as defined in 22 CFR Part 140. As stated in Section E, subcontractors are required to complete for each key personnel Attachment 05: Key Certification Regarding Narcotics Offenses and Drug Trafficking.

M.3 Certification Regarding Terrorism Financing Activities

Subcontractors are also required to complete Attachment 06: Certification Regarding Terrorism Financing.

N. Templates

N.1 Request for Subcontract Approval

To: Shanker K. Khagi, COTR, USAID/Nepal
From: Joseph Sanders, Chief of Party, USAID Nepal Flood Recovery Program
Date: - MONTH, DAY, YEAR
Subject: Request for Approval of Subcontract Activity **#XX: [NAME OF ACTIVITY]**
 under Contract #EDH-I-04-0500007-00

Under the USAID-funded Nepal Flood Recovery Program (USAID/NFRP) (Contract #EDH-I-04-05-00007-00), funds approved under the Contract may be utilized to subcontract NGOs, CBOs, associations, firms and other partner organizations to support program activities.

Accordingly, this is to request USAID approval of Subcontract Activity **#XX** for the provision of **[BRIEF DESCRIPTION OF ACTIVITY]**. Details of this subcontract are as follows:

Subcontract Summary		
Subcontract Number/Activity:	[GIVE NUMBER AND ACTIVITY, SUCH AS “#04: PROVISION OF 20 LATRINES AND 10 WASHING STATIONS IN BANKE DISTRICT”]	
Effective Date:	[MONTH, DAY, YEAR]	
Subcontractor Name:	[NAME]	
Cost Breakdown:	In US\$	%
USAID/NFRP Contribution:	\$XX,XXX.XX	XX%
Subcontractor Contribution:	\$XX,XXX.XX	XX%
Client/Counterpart Contribution:	\$XX,XXX.XX	XX%
Total Investment:	\$XX,XXX.XX	100%
Goal:	[BRIEF DESCRIPTION OF PURPOSE/GOAL]	
Brief Description of USAID/NFRP Contribution:	Purchase of services for the [construction, training, etc.] of...	
Brief Description of Subcontractor/Client Contribution:		
Brief Description of Deliverables/Results:		
Reporting Requirements:		

1. Description

[DESCRIPTION OF ACTIVITIES AND SERVICES TO BE PROCURED UNDER THIS SUBCONTRACT:

- **HOW THEY CONTRIBUTE TO PROGRAM OBJECTIVES (2-3 PARAGRAPHS, MENTIONING FLOOD DAMAGE, BENEFICIARIES, GEOGRAPHIC AREA, ANTICIPATED IMPACT)**
- **SPECIFY OUTPUTS/DELIVERABLES**
- **CO-INVESTMENT BY THIRD PARTIES**
- **ENVIRONMENTAL IMPACT]**

2. Selection Criteria

The proposed subcontractor was selected to implement this activity based on its scoring against the following criteria in competition with other prospective organizations:

Criteria Categories	Weightage	Score (1-5)		
		Sub #1 Score=Product	Sub #2	Sub #3
1. Updated legal registration and audited financial statements				
2. Familiarity with the geographic region of the proposed activity				
3. Ability to travel to and operate in the targeted geographic region				
4. Past performance in delivering similar services				
5. Technical capacity				
6. Management capacity				
7. Cost reasonableness of the proposed budget				
8. Ability to report on progress and deliverables				
9. Willingness to be monitored by program staff				
10. Willingness to comply with all subcontract clauses and certifications				
(Add additional points specified above)				
Total Possible Score: 50				
Percentage		%	%	%

[BRIEFLY MENTION OTHER CANDIDATE GROUPS AND HOW THE SUBCONTRACTOR WAS SELECTED FROM AMONG THEM]

3. Subcontract Budget

The following budget includes the total fixed price to be paid to the subcontractor by USAID/NFRP, as well as all subcontractor and third party contributions including those from subcontract beneficiaries:

Cost Category	USAID/NFRP	Subcontractor	Beneficiary / Other	Total
1.				
2.				
3.				
4.				
5.				
TOTAL				
Percentage of Contribution	XX%	XX%	XX%	100%

Table 1: Subcontract Budget (US\$)

4. Payment Mechanism

USAID/NFRP will make installment payments to the subcontractor against the completion of the deliverables specified in the subcontract, as approved by the Program Director. Cost contributions by the subcontractor, beneficiaries or third party organizations will be monitored by program staff and reported in the Project’s M&E System.

5. USAID/NFRP and USAID Concurrence

The proposed subcontract activity contributes to USAID/NFRP objectives:

Joseph Sanders, USAID/NFRP Program Director

Date

USAID concurrence

Date

The follow supporting documentation is attached:

1. Subcontract [#XX]
2. Negotiation Memorandum
3. Environmental Analysis
4. Certification Regarding Narcotics Offenses and Drug Trafficking
5. Certification Regarding Terrorism Financing
6. [OTHER INFORMATION AS APPLICABLE]

N.2 Subcontract Template

Fixed Price Contract # [XX]
between

Fintrac, Inc. and [Name of Subcontractor]

USAID/Fintrac Prime Contract EDH-I-00-05-00007-00 Task Order #4
USAID/Nepal Flood Recovery Program (USAID-NFRP)

Contractor: Fintrac Inc.
3077 Kronprindsens Gade 72
St. Thomas, USVI 00802, USA
Tel: (+1) 340 776-760
Fax: (+1) 340 776-7601

Subcontractor: [Insert name]
[Insert address and phone number]

Type of Subcontract: Fixed Price Contract

Period of Performance: [Insert time of performance in format: day/month/year]

Total Fixed Price: [Insert amount in NPR]

The Subcontractor, [Name of organization], agrees to furnish and deliver to **Fintrac, Inc.** all items and/or perform all services set forth in this contract. The rights and obligations of both parties to this fixed price contract shall be subject to, and governed by, the provisions and specifications described therein and duly executed by both parties.

Signature - Fintrac, Inc.

Name: Joe Sanders

Title: USAID-NFRP Chief of Party

Date: _____

Signature – [Name of Subcontractor]

Name: _____

Title: _____

Date: _____

This Subcontract is made this day [Insert date] between Fintrac Inc., (hereinafter "Fintrac" or the "Company"), a corporation organized and existing under the laws of the U.S. Virgin Islands, and having offices at # 3077 Kronprindsens Gade 72, St. Thomas, USVI 00802, USA, and [Subcontractor – Name and Address] (hereinafter "[Insert Name]" or "Subcontractor").

Under Fintrac's contract with the US Agency for International Development (hereinafter "USAID") to supply services under the Nepal Flood Recovery Program (hereinafter USAID/NFRP), contract #EDH-I-04-05-00007-00, Fintrac wishes to contract [Name of subcontractor] for the provision of services as outlined below.

Part I – Terms of Reference

1. Introduction

[3-4 Paragraphs describing subcontract activity, including how this contract fits into the general NFRP program and the specific component]

2. Scope of Work

Specific tasks to be undertaken by the contractor include:

[List out specific activities in detail to be undertaken under this subcontract]

2.1 Objectives

[Insert general and specific objectives]

2.2 Implementation Requirements and Methodology

[Insert information about the technical approach and implementation, beneficiaries, geographical locations, technical assistance and inputs]

3. Budget Details

[Insert a detailed budget of this subcontract]

4. Period of Performance

The performance period of the subcontract is [Effective Dates].

5. Deliverables

[Detailed description of subcontract deliverables/results and scheduled dates of completion]

A report on the completion of each deliverable shall be delivered to the USAID/NFRP Program Director no later than 10 days following its completion. The Subcontractor must notify the USAID/NFRP Program Director in writing should it not be able to complete the specified deliverables by the agreed upon dates.

6. Reporting and Technical Direction

The subcontractor will directly report to the USAID/NFRP **[INSERT TITLE OF POINT PERSON]** and will regularly receive guidance and support from the **[INSERT NAMES]** and the Chief of Party.

[INSERT NAME] will monitor implementation on a day-to-day basis, coordinating all logistical and programming operations and the collection of relevant data and information.

[INSERT NAME] will monitor and report results of the program as per the approved workplan. He will also ensure that all activities are in compliance with USAID environmental regulations and are following the prescribed mitigation measures.

7. Amendments. The quantity and timing of services described in the subcontract is subject to amendment at any time by Fintrac, USAID/NFRP, and/or USAID/NFRP counterparts. In accepting this contract, **[SUBCONTRACTOR]** agrees that it will not hold Fintrac liable in any way for alterations in the scope or timeline of services to be provided. The Subcontractor further agrees to provide the agreed-upon services faithfully, appropriately, and to the best of its ability, and to comply with local laws and customs.

Part II – Subcontract Value

Fintrac will pay **[SUBCONTRACTOR]** the following sum(s) in local currency equivalent for the successful delivery of the deliverables indicated in this contract:

DELIVERABLE 01:	<u>NPR XX,XXX</u>
DELIVERABLE 02:	<u>NPR XX,XXX</u>
DELIVERABLE 03:	<u>NPR XX,XXX</u>
TOTAL	<u>NPR XX,XXX</u>

The sum of these deliverables represents the total value of this subcontract, and is fixed for the period of performance outlined in Part III.

Part III – Invoicing

Upon USAID/NFRP Director Joe Sander's acceptance of each deliverable described in Part I, the Subcontractor shall submit an invoice to Fintrac, Inc. for payment. The invoice shall include the following information: (1) total amount due in Nepali Rupees as indicated in the subcontract, and (2) payment information and instructions, (3) **[INSERT NAME]** will verify the invoice document. The invoice shall be sent to:

USAID Nepal Flood Recovery Program
 Att: Joseph Sanders, Program Director
 43/15 Dandibaba Marg, Tangal
 Kathmandu-2, Nepal
 Tel: (+977) 1-441-4162

Part IV – Payments

Payments under this subcontract are contingent upon the satisfactory completion of the specified deliverables as determined by the USAID/NFRP Program Director. USAID/NFRP will make installment payments to the subcontractor against the completion of the deliverables specified in this contract. In the case that activities and deliverables scheduled in the detail work-plan are not completed on time, corresponding payments will not be processed until the scheduled activities or deliverables are accomplished.

The Subcontractor's invoice will be paid by Fintrac within thirty (30) business days of Fintrac's receipt of (a) approval of Subcontractor deliverable(s), or (b) Subcontractor's invoice, whichever occurs later. Payment will be made in local currency at prevailing exchange rates, paid as per the instructions specified in the Subcontractor's invoice. The Subcontractor agrees that Fintrac will not be held liable for late payments due to incorrect / incomplete payment information provided by the Subcontractor.

USAID/NFRP will make the applicable tax deduction from the Subcontract budget in accordance with prevailing Nepali tax code. If applicable, the corresponding Value Added Tax (VAT) amount will be deducted from each payment and will be retained by USAID/NFRP until the Subcontractor can demonstrate evidence of the pertinent tax deposit made to the Inland Revenue Department.

Part V – Personnel Status

Personnel supplied by the Subcontractor for the provision of services described in Part I are recognized by Fintrac and USAID/NFRP as employees of the Subcontractor only, and shall not be considered short-term consultants of Fintrac, nor USAID/NFRP, nor shall any such personnel receive individual consulting fees, per diems etc. from Fintrac or USAID/NFRP for services procured from the Subcontractor.

Part VI – Data Ownership

Ownership of the Contractor's reports, research, data and other work rests with Fintrac, and all materials must be delivered to Fintrac as specified in Part I. The Subcontractor agrees not to publish or make any other use of such materials without the prior approval in writing of Fintrac. This clause does not alter any contractual requirement on the part of Fintrac with respect to data ownership rights of USAID.

Part VII – Conflict of Interest

The Subcontractor, its directors and employees shall not engage, directly or indirectly, in any business or professional activity in Nepal that would conflict with the performance of its obligations under this Subcontract.

Part VIII – Termination

This subcontract may be terminated by either Fintrac or the subcontractor provided termination is mutually agreed to by both parties. Additionally, by signing this contract, the subcontractor acknowledges that Fintrac has the right to unilaterally terminate this subcontract in the event that:

- USAID terminates the USAID/NFRP program;
- USAID changes, or otherwise alters, Fintrac's Scope of Work under USAID/NFRP;

- USAID reduces the USAID/NFRP program budget (or fails to provide incremental program funding);
- USAID otherwise requires Fintrac to terminate the subcontract for any other reason;
- Fintrac determines that termination of the subcontract is necessary to otherwise fulfill its contractual obligations to USAID.

Part IX – Legal Agreement

This Subcontract shall be binding upon the Subcontractor and Fintrac, and on their respective successors, heirs and assignees. This Subcontract may not be assigned by either party without the prior written consent of the other. This Subcontract shall be interpreted and construed under and in accordance with the laws of the District of Columbia, United States of America. The parties hereby expressly agree and acknowledge that the courts of the District of Columbia shall have sole and exclusive jurisdiction over any dispute arising under or otherwise relating to this agreement.

Part X – Subcontractors Responsibilities

Subcontract: The Subcontractor shall not subcontract any services or work to be performed under this Subcontract, except as specified in the Subcontractor's proposal, without prior written authorization from Fintrac's Subcontract Administrator. Neither this Subcontract nor any subtier subcontract will create any contractual relationship between any subtier Subcontractor and the Client or Fintrac, nor any liability of the Client or Fintrac to any subtier subcontractor.

Assignment: The Subcontractor shall not transfer, assign or hypothecate its interest in this Subcontract without the written consent of Fintrac: and any attempted transfer, assignment, or hypothecation without such written consent shall be void and confer no rights upon any third person and shall constitute a default hereunder.

Employees of the Subcontractor: The Subcontractor shall be subject to and operate under all applicable Federal and State laws regarding employers' liability, workmen's compensation, Federal social security, and unemployment compensation insurance, and the Subcontractor expressly agrees that it is independent of Fintrac and its employees engaged in the work are not and shall not be treated or considered employees of Fintrac.

Safety: In the performance of the Subcontract, the Subcontractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful authorities or any public authority having jurisdiction for the safety of persons or property and protect the same from damage, injury or loss. The Subcontractor shall take all reasonable precautions to prevent damage, injury, or loss to all persons performing services hereunder, the work, all materials and equipment utilized therein, and all other property at the site of the work and adjacent thereto.

Proprietary Information: The Subcontractor shall not directly or indirectly or through its employees disclose to any third person or use for the benefit of anyone other than Fintrac, either during or after the term of this Subcontract (or for the period of time stipulated in the applicable data), any secret or proprietary information of Fintrac, whether relating to the work performed hereunder or to the business and affairs of Fintrac, or the Client. Such information shall include, without limitation, Fintrac or Client manuals, forms or procedures. Disclosure shall not be made without the prior written consent of Fintrac unless disclosure is required by law, in which case notification of the request for such information shall be provided to Fintrac prior to release. Information identified in writing by the Subcontractor as confidential and/or proprietary

shall be similarly treated by Fintrac. This clause applies to information which has been designated as proprietary or which should be treated as proprietary in light of the circumstances surrounding its acquisition without the prior written consent of Fintrac.

Publications: The Subcontractor shall not publish or publicly disseminate any information or data derived or obtained from or in connection with any services rendered hereunder, without the prior written consent of Fintrac.

Technical Data: All evaluations, reports, records, and other work products relating hereto produced by the subcontractor pursuant to this Subcontract shall be considered technical data and subject to the provisions of FAR 52.227-14.

License and Permits: Except as otherwise directed by Fintrac, the Subcontractor has or will have, prior to commencement of any work, all necessary business and professional licenses and/or permits as may be required to enable the Subcontractor to perform the Subcontract.

Warranty and Guarantee for Services: The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all material produced and other services furnished by the Subcontractor under this Subcontract. The Subcontractor shall, without additional compensation, correct, or revise, any errors or deficiencies which are discovered within 12 months of the end date of this subcontract. If such deficiencies are not corrected in a timely manner, Fintrac may cause the same to be corrected and deduct such corrective action costs incurred from monies otherwise due to Subcontractor. Subcontractor shall be liable for any such excess costs and shall reimburse Fintrac within 30 calendar days of receipt of invoice. This warranty and corrective action shall not limit the application of any other warranty or remedy available hereunder or by law.

Warranty and Guarantee for Equipment and Supplies: Subcontractor warrants that all items delivered or furnished under this Subcontract shall be merchantable, free from defects in material and workmanship and shall conform to applicable specifications and drawings. If Subcontractor is responsible for the design of the product or item according to performance specifications established by the contractor, Subcontractor warrants that all products or items furnished under the Subcontract shall be free from defect in design and shall be fit and sufficient for the purpose intended by the Contractor. Fintrac's approval for the design furnished by the Subcontractor does not relieve the Subcontractor of its obligations under this warranty.

Warranties Run to Fintrac and Client: Subcontractor's warranties together with any services warranties shall run to Fintrac and the Client. Subcontractor warrants that any manufacturer or supplier warranty provided with delivered or furnished products or items shall flow to Fintrac and Client.

Part XI – Contractor's Responsibility and Authority

Inspection: Fintrac, through any authorized representatives, shall have the right at all reasonable times to inspect, or otherwise evaluate, the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by Fintrac on the premises of the Subcontractor, the Subcontractor shall provide all reasonable facilities and assistance for the safety and convenience of Fintrac representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Audit: Upon request of Fintrac, the accounting records, as well as other records maintained by the Subcontractor in the performance of the work specified herein, shall be subject, at all reasonable times, to audit by an independent public accounting firm selected by Fintrac. In addition, Fintrac may have such an audit performed at any time within two years following the completion or termination of work specified herein.

Removal of Subcontractor's Employees: If Fintrac initiates a complaint about the unsatisfactory performance of a Subcontractor's employee; it will notify the Subcontractor of the details of the unsatisfactory performance and may request removal of such employee. Subcontractor shall be awarded the opportunity to consider the impact of such a change on the project and may refute such claims if appropriate. The Subcontractor and Fintrac agree that no such demand for removal shall be unreasonably made, nor unreasonably refuted.

Part XII – Special Provisions

Salary Supplementation: No funds provided under this award shall be used to make any payments to government employees, without prior written approval of Fintrac and USAID.

Prohibition of Assistance to Drug Traffickers (ADS 206.5.9): Fintrac and/or USAID reserve the right to terminate subcontracts, demand refund of funds paid, or take other appropriate measures if the subcontractor is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking, as defined in 22 CFR Part 140. Subcontractors are required to complete for each key personnel Attachment: Key Certification Regarding Narcotics Offenses and Drug Trafficking.

Certification Regarding Terrorism Financing Activities: Subcontractors are also required to complete and sign Attachment: Certification Regarding Terrorism Financing.

Communication with USAID: All of the subcontractor's written or oral communication with or to USAID, or with Federal, State, or local agencies relative to work under this subcontract must be through or with the authorization of Fintrac or the NFRP CoP.

Dispute Resolution: Any controversy or claim arising out of or relating to this Subcontract, or the breach thereof, shall be settled by arbitration in the District of Columbia administered by the American Arbitration Association and judgment on the award rendered by the arbitrator(s) shall be final and binding on the parties and may be entered in any court having jurisdiction thereof. During the pendency of any controversy or claim hereunder, the Subcontractor shall proceed diligently with the performance of the Subcontract and in accordance with the direction of Fintrac.

Part XIII – Clauses Incorporated by Reference

This fixed price contract incorporates the following clauses of the Federal Acquisition Regulations (Title 48 of the Code of Federal Regulations, Chapter 1) and AID Acquisition Regulations (Title 48 of the Code of Federal Regulations, Chapter 7) by reference, with the same force and effect as if they were given in full text. The full text is available at:

<https://www.acquisition.gov/far/>
<http://www.usaid.gov/policy/ads/300/aidar.pdf>

Modifications that apply to this fixed price contract may appear after each clause. It is understood and agreed that the Subcontractor may be obligated by and to Fintrac for any specifications or documentation required of Fintrac under these clauses, and that references to the Fintrac may also refer to the Subcontractor. The Subcontractor hereby agrees to abide by the terms and conditions imposed by these clauses. With respect to documentation and approvals required under these clauses, all such documentation and approvals shall be submitted to or requested from Fintrac.

Federal Acquisition Regulations (FAR) Clauses

NUMBER	TITLE
52.202-1	DEFINITIONS
52.203-3	GRATUITIES
52.203-5	COVENANT AGAINST CONTINGENT FEES
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	ANTI-KICKBACK PROCEDURES
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER
52.204-7	CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS
52.215-2	AUDIT AND RECORDS--NEGOTIATION
52.215-8	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT
52.215-10	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATION
52.215-12	SUBCONTRACTOR COST OR PRICING DATA
52.215-13	SUBCONTRACTOR COST OR PRICING DATA MODIFICATIONS
52.215-14	INTEGRITY OF UNIT PRICES
52.216-7	ALLOWABLE COST AND PAYMENT
52.217-8	OPTION TO EXTEND SERVICES
52.217-9	OPTION TO EXTEND THE TERM OF THE CONTRACT
52.219-4	NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JAN 1999)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-14	LIMITATIONS ON SUBCONTRACTING
52.219-16	LIQUIDATED DAMAGES-SMALL BUSINESS SUBCONTRACTING PLAN
52.219-25	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING
52.222-3	CONVICT LABOR
52.222-21	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	EQUAL OPPORTUNITY
52.222-29	NOTIFICATION OF VISA DENIAL
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS
52.223-6	DRUG-FREE WORKPLACE
52.223-14	TOXIC CHEMICAL RELEASE REPORTING
52.225-14	INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT
52.228-7	INSURANCE--LIABILITY TO THIRD PERSONS
52.229-3	FEDERAL, STATE AND LOCAL TAXES
52.230-2	COST ACCOUNTING STANDARDS
52.230-4	CONSISTENCY IN COST ACCOUNTING PRACTICES
52.230-5	COST ACCOUNTING STANDARDS EDUCATIONAL INSTITUTION
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS
52.232-1	PAYMENTS
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS
52.232-11	EXTRAS
52.232-22	LIMITATION OF FUNDS
52.232-23	ASSIGNMENT OF CLAIMS
52.232-25	PROMPT PAYMENT
52.233-1	DISPUTES
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS
52.242-3	PENALTIES FOR UNALLOWABLE COSTS
52.242-13	BANKRUPTCY
52.243-1	CHANGES--FIXED PRICE ALTERNATE I (APR 1984)
52.243-7	NOTIFICATION OF CHANGES
52.244-2	SUBCONTRACTS ALTERNATE II (AUG 1998)
52.244-5	COMPETITION IN SUBCONTRACTING
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS
52.246-23	LIMITATION OF LIABILITY
52.246-25	LIMITATION OF LIABILITY - SERVICES
52.248-1	VALUE ENGINEERING
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
52.249-8	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)
52.249-14	EXCUSABLE DELAYS
52.253-1	COMPUTER GENERATED FORMS

US Agency for International Development Acquisition Regulations (AIDAR) Clauses

752.202-1	DEFINITIONS
752.204-2	SECURITY REQUIREMENTS
752.209-71	ORGANIZATIONAL CONFLICTS OF INTEREST DISCOVERED AFTER AWARD
752.211-70	LANGUAGE AND MEASUREMENT
752.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS
752.225-70	SOURCE, ORIGIN, AND NATIONALITY REQUIREMENTS
752.226-2	SUBCONTRACTING WITH DISADVANTAGED ENTERPRISES
752.228-3	WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)
752.228-7	INSURANCE-LIABILITY TO THIRD PERSONS
752.228-70	MEDICAL EVACUATION (MEDEVAC) SERVICES

752.229-70	FEDERAL, STATE, AND LOCAL TAXES
752.7001	BIOGRAPHICAL DATA
752.7002	TRAVEL AND TRANSPORTATION
752.7004	EMERGENCY LOCATOR INFORMATION
752.7005	SUBMISSION REQUIREMENTS FOR DEVELOPMENT EXPERIENCE DOCUMENTS
752.7006	NOTICES
752.7007	PERSONNEL COMPENSATION
752.7008	USE OF GOVERNMENT FACILITIES OR PERSONNEL
752.7010	CONVERSION OF U.S. DOLLARS TO LOCAL CURRENCY
752.7014	NOTICE OF CHANGES IN TRAVEL REGULATIONS
752.7025	APPROVALS
752.7033	PHYSICAL FITNESS
752.7034	ACKNOWLEDGEMENT AND DISCLAIMER
752.7035	PUBLIC NOTICES

N.3 Negotiation Memorandum

Guidelines for Completing the Negotiation Memorandum under a Fixed Price Subcontract or Partner Fund Subgrant Award

The following documents are typically submitted to USAID for approval¹ of a Fixed Price Subcontract or Subgrant Award², which are collectively referred to as Subawards in this section:

1. Request for subcontract/subgrant approval memorandum
2. Subcontract/subgrant award document
3. Negotiation Memorandum
4. Environmental Analysis

The following additional documents may also be required. Review the prime contract to determine which certifications apply. The project's subawards manual will also outline which documents are required and provide templates for these:

1. Certification regarding terrorism financing
2. Key individual certification concerning narcotics offences and drug trafficking
3. Certification regarding lobbying activities

The Negotiation Memorandum is a key part of the package. Not only is it required under the FARs, but it enables the contractor to demonstrate due diligence and transparency in the subaward solicitation and proposal process. It is therefore critical to draft a complete and thorough Negotiation Memorandum for each subaward. Doing so demonstrates transparency and cost reasonableness to the approving COTR or CO and will also facilitate any future audit of a project's subaward activities. Not completing the memorandum can have negative repercussions, ranging from the minor, i.e., delays in an activity being approved, to the major, i.e., failing a USG audit of subaward activities, with potentially drastic consequences of its own.

For the Negotiation Memorandum, the Federal Acquisition Regulation (FAR 52.244-2: Subcontracts) states that this shall include the following description elements:

- (A) The principal elements of the 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;

¹ In some cases fixed price subcontracts or subgrant awards are pre-approved in Fintrac's contract with USAID or USAID has issued a 'Consent to subcontract' letter. In this case a request for approval is not necessary but all other documents should be on file.

² Partner Fund Subgrant Awards may have additional requirements for approval, such as a memorandum on a competitive solicitation or a pre-award survey. Please refer to the prime contract with USAID, particularly the 'grants under contract' section, the project subgrants and subcontracts manual as well as specific guidelines from the COTR or CO.

- (D) The extent, if any, to which the Contractor did not rely on the 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 subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
- (F) The reasons for any significant difference between the Contractor'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.

Fintrac has adapted these elements into a Negotiation Memorandum Template to be used with fixed price subcontracts and partner fund subgrant awards.

The following guidelines provide information for each section of the Negotiation Memorandum template presented as Attachment 01, with the questions in each section used to determine what information to document:

General Comments on Preparing the Negotiation Memorandum

- Negotiation Memorandums should be preferably done by the project's Subcontracts/Subgrants Manager, working with the COP and/or technical specialists as needed.
- Notes are to be kept from all meetings and e-mail correspondence with the subawardee during the negotiation phase in order to provide complete information for this form. These notes are kept in the subaward file as they may be required during a subcontracts or subgrants audit.
- Negotiations regarding labor are useful for determining the cost of services to be provided for all subawards. However, labor is not documented in the Negotiation Memo for fixed price subcontracts, since that mechanism is used to pay for a net product or service. Labor discussions should be documented for Negotiation Memos dealing with Partner Fund subgrant awards.
- Prior to submission to USAID, the responsible PMU reviews the entire subaward package, inclusive of the Negotiation Memorandum with final detailed budget, cost notes and relevant written correspondence.
- Samples of completed Negotiation Memorandums are provided on DIS.

Section 1: Budget Review

- The subaward budget should be assessed based on cost reasonableness and competitiveness.
- The assessment is based on the overall cost of the subaward key elements, such as services provided or large equipment items. Other categories to consider in the

assessment are: salary/fringe³, travel, other direct costs, or fees (if applicable, usually these are not).

- Relevant cost items should be separately assessed based on one (or more) of the following criteria:
 - a) There is adequate price competition;
 - b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services, made on a competitive basis or supported by valid certified cost or pricing data;
 - c) Available cost or pricing information permits realistic estimates of the likely cost of services; or
 - d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

- Criteria a), if sufficiently supported by information such as competitive quotations, is the preferred choice.
- For criteria b), specific backup information needs to be on file to verify that this is not simply a blanket statement and that costs have actually been compared. Information (such as prior quotations) that was documented for prior subawards can be utilized, but should be copied to the new subaward file. Quotations should be relatively recent, i.e., within the last year but no later than two years old.
- Criteria c) is most frequently chosen, but requires detailed information and breakdowns at the negotiation stage. For this reason, **negotiations need to be consistent and serious.**
- The review needs to be based on a detailed budget and budget notes. In general, all costs must be allowable and reasonable. The following guiding points should be considered for the review, with relevant questions posed during the review and a brief description provided in Section 1 of the Negotiation Memorandum:

Table 1: Negotiation Memo (Section 1) Cost Review Elements

<ul style="list-style-type: none"> • Salaries & Wages 	<ul style="list-style-type: none"> • What is the basis for analysis of labor rates: e.g., comparison with other contracts, published wage data, historical data, or other reasonable estimation costs? • Are costs for identified personnel in accordance with actual labor rates/salaries? • What method was used to calculate composite rates if applicable? • Are proposed direct charges of home office time reasonable?
<ul style="list-style-type: none"> • Travel & Transport 	<ul style="list-style-type: none"> • Are proposed costs reasonable in terms of both units and total costs proposed? • Is all proposed travel necessary for proper conduct of the

³ While salary and fringe costs may be allowable, Federal Cost Regulations contain a list of exceptions and limits for compensation for professional services. It is advised to check these conditions prior to finalizing the agreement. The partner should also provide proof of reasonability of costs of compensation.

	<p>proposed SOW?</p> <ul style="list-style-type: none"> • Are Ground transportation costs are reasonable and justified? • Do per-diem rates follow the maximum USG rates for the location specified?
<ul style="list-style-type: none"> • Other Direct Costs (ODCs) 	<ul style="list-style-type: none"> • What type of cost is involved and was there any exception taken to the proposed amount? • Are all items / supplies provided under ODCs expendable? • Are MEDEX and DBA rates at current USG rates? • Are costs for communication, operation /maintenance reasonable and justified by the SOW?
<ul style="list-style-type: none"> • Equipment & Freight – if applicable 	<ul style="list-style-type: none"> • Are costs for equipment items justified and reasonable? • Are competitive quotes are provided? • Are all items listed non-expendable items? • Is special technical equipment included in the budget adequately explained to make a positive determination for its inclusion?
<ul style="list-style-type: none"> • Indirect Cost(s) – if applicable 	<ul style="list-style-type: none"> • How are proposed derived (historical data, audit information, final or provisional NICRA)? • If the organization does not have a USG-approved NICRA, all proposed operating costs should be itemized rather than included under an Indirect Cost rate.

Section 2.A: The principal elements of the subcontract price negotiations

- Describe all relevant elements during negotiation, including timeframe and names of participants.
- Why was the partner organization selected for this project?
- If applicable, describe the relationship to the partner organization in a previous project or activity.
- Stages of negotiations typically are:
 1. Selection of partner organization through solicitation process stage;
 2. Finalization of partner technical and cost proposal for USAID approval
 3. Response to USAID clarification questions, if any, and finalizing of award and budget
 4. USAID approval and award
- Add in a very short (2-3 lines) the SOW of the subaward.
- What elements were discussed during negotiations? (i.e., materials for construction – quality and quantity, commercial prices vs. government standard prices, cost comparison with similar activities).

Section 2.B: The most significant considerations controlling establishment of initial or revised prices

- State whether requested timeframe and/or deliverables planned for this award were revised based on cost considerations.
- Significant changes may also appear at USAID's requests for revision or clarification prior to approval.

- Were there any revisions based on compliance with rules and regulations of the local government and USAID?
- What was (for Fintrac) the most significant consideration to achieve? Lowest costs, highest quality, within budget, within time, etc.
- Has Fintrac requested any other clarifications that were addressed?
- Were cost-sharing capabilities of the partner and beneficiary communities discussed?
- Is the final price in line with Fintrac's budget for this activity, and does it support carrying out the SOW?

Section 2.C: The reason cost or pricing data were or were not required

- Usually pricing data is required to ascertain cost reasonableness.
- How was the data provided? Level of detail, broken out by SOW/deliverables, etc.
- Were cost notes submitted with the budget? Were these found to be logical and clear?
- Did the proposed subawardee provide supporting documentation in order to verify the information? (i.e., vendor quotations, NICRA statement, audited financial statements).
- Were cost assumptions based on instructions from Fintrac?

Section 2.D: The extent, if any, to which the contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price

- Did Fintrac rely on its own pricing data from similar projects in determining the cost reasonableness of this activity?
- If Fintrac has done its own research on pricing data (i.e., vehicle purchases) or has used data from similar current or recent projects (i.e. administrative costs) this should be noted and documented on file.
- Also note when Fintrac relies on subawardee information for activities that are unique, or have not been done by Fintrac in the country (i.e. sector market studies).

Section 2.E: The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated

- Cost data (i.e. operational costs) often need to be revised such as during discussions regarding the timeline, SOW or deliverables, especially during revisions.
- Summarize the partner's revision process based on feedback from Fintrac and/or USAID.
- Describe the impact (increase/decrease) on the budget of any revisions.

Section 2.F: The reasons for any significant difference between the Contractor's price objective and the price negotiated

- If there are no significant differences, it is helpful to add that the subaward budget is within the originally anticipated cost for this activity and the designated project budget line item, and represents no increase to the prime contract budget.

Section 2.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

- Fintrac subawards typically have no fees or incentives included.
- Suggested response: Not applicable. There is no incentive fee or profit plan associated with this subaward.
- For fixed price subcontracts, add: This is a fixed price subcontract whereby the subcontractor is paid for actual provision of required deliverables as spelled out in the subcontract.

Section 3: Justification for Contract Type Selection:

Choose one of the following justifications based on subaward type:

Subaward	Justification
Fixed Price Subcontract	<ul style="list-style-type: none"> - Fixed Price Subcontracts place upon the subcontractor maximum risk and full responsibility for all costs. It provides maximum incentive for the subcontractor to control costs and perform effectively, and imposes a minimum administrative burden upon both contracting parties.
Subgrant Award (Partner Fund Award)	<ul style="list-style-type: none"> - If permitted in Fintrac's prime award with USAID (Grants under Contract approval must be received from USAID). - There is a limited involvement of Fintrac and recipients have greater flexibility with program implementation.
Cost Reimbursable Subcontract (not applicable for this template but listed for completeness)	<ul style="list-style-type: none"> - If not all costs can be determined with sufficient accuracy. - Subcontracts are usually longer than a year and while general responsibilities are typically outlined in the SOW, the exact scope of individual activities is unknown at the time of signing. - Per FAR 16.301-3, a cost-reimbursement contract may be used only when: (1) The contractor's accounting system is adequate for determining costs applicable to the contract; and (2) appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used. - Suggested language to add: Fintrac will also closely monitor all subcontractor charges billed to the project for allowability and reasonableness, and will provide necessary financial and technical management oversight to the subcontractor for the life of the project.

Table 2: Justifications to Be Used for Contract type Selection

NFRP - Fintrac Negotiation Memorandum [Template]

Date: [Insert Date].
 Reference: USAID Prime Contract EDH-I-00-05-00007-00 Task Order #4 NFRP
 Subject: Negotiation Memorandum – Fixed Price Contract between Fintrac, Inc. and [Insert name of subcontractor]

Contract/Agreement #	EDH-I-00-05-00007-00 TO#4.
Subcontract / Grant #	[Insert Subcontract Number]
Fintrac Reviewer(s)/Negotiator(s)	[Insert Name of Fintrac's Reviewer(s)]
Partner Reviewer(s) / Negotiators (s)	[Insert Name of Subcontractors reviewer(s)]
Negotiation Phases (including dates and form of communication (phone, in person, and e-mail):	[Insert major negotiation phases, such as meetings, phone conversations, or email exchanges, with dates]
Date Negotiations completed	[Insert the completion date, must be prior to contract approval]

Section 1: Budget Cost Review

[Insert brief text on major budget line items]

Section 2: Additional Details per FAR Requirements

In accordance with FAR clause 52.244-2, Section (f) (1) (vii), Fintrac Inc. provides the following information regarding the content of the proposed agreement:

- A. Principal elements of the subcontract price negotiations.

Please see Section 1: Budget Cost Review for principal elements of subcontract price negotiations.

- B. The most significant consideration in establishing initial or revised prices.

[Insert Text]

- C. The reason cost or pricing data were or were not required.

[Insert Text]

- D. The extent, if any, to which the Contractor did not rely on the Subcontractor's cost or pricing data in determining the price objective and negotiating the final budget.

[Insert Text]

- E. The extent to which it was recognized in the negotiation that the Subcontractor's pricing data were not accurate, complete or current; the action taken by the Contractor and the Subcontractor; and the effect of any such defective data on the total price negotiated.

[Insert Text]

- F. The reasons for any significant difference between the Contractor's price objective and the price negotiated.

[Insert Text]

- G. A complete explanation of the incentive fee or profit plan when incentives are used.

[Insert Text]

Section 3: Justification for Contract Type selection

[Insert Text]

N.4 Environmental Analysis

Subcontract No./Activity:	
Subcontractor:	
Activity Location:	
Beneficiaries:	
Reviewer's Name / Title:	
Date of Review:	
USAID Approvals/ Verification (if any):	

Instructions for Reviewer:

Objective: To determine whether the proposed action has potential for environmental impact, and if so, to determine the scope and extent of additional environmental evaluation, mitigation, and monitoring necessary to fulfill federal U.S. environmental requirements.

Environmental Consequences: Check appropriate column as Significant Negative Impact (SN), Minor Negative Impact (MN), No Impact (N), Positive Impact (P), or Impact Unknown (U). List the proposed mitigation measures for each significant and minor negative impact. In the unlikely event that an impact is unknown, then the activity should be modified or eliminated, or a more detailed environmental assessment undertaken.

1. Earth Resources

- a. grading, trenching, or excavation > 1.0 hectare
- b. geologic hazards (faults, landslides, liquefaction, unengineered fill, etc.)
- c. contaminated soils or ground water on the site
- d. offsite overburden/waste disposal or borrow pits required > 1.0 ton
- e. loss of high-quality farmlands > 10 hectares

SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U

2. Air Quality

- a. substantial increase in onsite air pollutant emissions (construction/operation)
- b. violation of applicable air pollutant emissions or ambient concentration standards
- c. substantial increase in vehicle traffic during construction or operation
- d. demolition or blasting for construction
- e. substantial increase in odor during construction or operation
- f. substantial alteration of microclimate

SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U

3. Water Resources and Quality

- a. river, stream or lake onsite or within 30 meters of construction
- b. withdrawals from or discharges to surface or ground water
- c. excavation or placing of fill, removing gravel from, a river, stream

SN	MN	N	P	U
SN	MN	N	P	U
SN	MN	N	P	U

or lake

d. onsite storage of liquid fuels or hazardous materials in bulk quantities

SN	MN	N	P	U

4. Cultural Resources

a. prehistoric, historic, or paleontological resources within 30 meters of construction

SN	MN	N	P	U
----	----	---	---	---

b. site/facility with unique cultural or ethnic values

SN	MN	N	P	U
----	----	---	---	---

5. Biological Resources

a. vegetation removal or construction in wetlands or riparian areas > 1.0 hectare

SN	MN	N	P	U
----	----	---	---	---

b. use of pesticides/rodenticides, insecticides, or herbicides > 1.0 hectare

SN	MN	N	N	U
----	----	---	---	---

c. construction in or adjacent to a designated wildlife refuge

SN	MN	N	N	U
----	----	---	---	---

d. use of local timber resources

SN	MN	N	N	U
----	----	---	---	---

6. Planning and Land Use

a. potential conflict with adjacent land uses

SN	MN	N	P	U
----	----	---	---	---

b. non-compliance with existing local/national land policies, codes, permits or design factors

SN	MN	N	P	U
----	----	---	---	---

c. construction in national park or designated recreational area

SN	MN	N	P	U
----	----	---	---	---

d. reconstructed or rehabilitated structures exceed 10,000 square feet

SN	MN	N	P	U
----	----	---	---	---

d. create substantially annoying source of light or glare

SN	MN	N	P	U
----	----	---	---	---

e. relocation of >10 individuals for +6 months

SN	MN	N	P	U
----	----	---	---	---

f. interrupt necessary utility or municipal service > 10 individuals for +6 months

SN	MN	N	P	U
----	----	---	---	---

g. substantial loss or inefficient use of mineral or non-renewable resources

SN	MN	N	P	U
----	----	---	---	---

h. increase existing noise levels >5 decibels for +3 months

SN	MN	N	P	U
----	----	---	---	---

7. Traffic, Transportation and Circulation

a. increase vehicle trips >20% or cause substantial congestion

SN	MN	N	P	U
----	----	---	---	---

b. design features cause or contribute to safety hazards

SN	MN	N	P	U
----	----	---	---	---

c. inadequate access or emergency access for anticipated no. of people or traffic

SN	MN	N	P	U
----	----	---	---	---

8. Hazards

a. substantially increase risk of fire, explosion, or hazardous chemical/material release

SN	MN	N	P	U
----	----	---	---	---

b. increase exposure to water resources with coli-form bacteria or arsenic content above national standards

SN	MN	N	P	U
----	----	---	---	---

b. bulk quantities of hazardous materials or fuels stored on site +3 months

SN	MN	N	P	U
----	----	---	---	---

c. create or substantially contribute to human health hazard

SN	MN	N	P	U
----	----	---	---	---

9. NRFP Specific Questions regarding Environmental Impact:

Question	No	Yes	N/A
----------	----	-----	-----

Does the project violate National Environmental Policies or procedures?			
Does the project use hazardous materials such as asbestos, lead-based paint, chlorine gas and toxic solvent?			
Does the project use illegal timber?			
Does the project procure, use and dispose pesticides?			
If there are land preparation and construction projects included, are there mitigation measures planned?			
If construction activities are included, is the team aware of historically and culturally significant artifacts?			
If water supplies are planned, has there been done research on adverse impacts on the existing water supply?			
If drinking water is provided, is the water tested to meet drinking water standards?			
Are sound principles of environmental management, including manure management, agricultural chemical management, and medical materials waste management and disposal implemented?			
To the extent feasible, is integrated pest management, integrated solid waste management, and resource recovery, reuse, recycling, and composting encouraged?			
To the extent feasible are program activities conform with U.S. Green Building Council standards (www.usgbc.org/LEED)?			

Summary of Impact

ENVIRONMENTAL DETERMINATION AND RECOMMENDED ACTION

(Check Appropriate Action)

(a) The project has no potential for substantial adverse environmental effects.	
(b) The project has little potential for substantial adverse environmental effects, however the recommended mitigation measures (listed above) will be incorporated in the SOW. No further environmental review is required.	
(c) The project has substantial but mitigatable adverse environmental effects and required measures to mitigate environmental effects (listed above) will be included in the SOW.	
(d) The project has potentially substantial adverse environmental effects, and revisions to the project design or location or the development of new alternatives is required.	
(e) The project has substantial and unmitigable adverse environmental effects. Mitigation is insufficient to eliminate these effects and alternatives are not feasible. The project is not recommended for funding.	

Mitigation Plan

Enter the Question/Row # of the potential negative impacts with “SN” or “MN” responses and complete table below for mitigation measures to reduce or eliminate the issue.

#	Description of Impact	Prescribed Mitigation or Investigation Measures
---	-----------------------	---

NOTES:

Program technicians will analyze each subcontract activity in accordance with best environmental practices, as well as the determinations and conditions of USAID’s Initial Environmental Examination (IEE) for USAID/NFRP. Since the IEE determined that “small scale construction, rehabilitation, and repairs, and some technical training areas, qualify for **Negative Determination with Conditions** per 216.3 (a)(2)(iii), the **Conditions** are that:

1. These activities meet or exceed the requirements of the National Environmental Policies and Procedures of the Government of Nepal (GON) [Nepal has enforced [accepted?] the Environmental Impact Assessment Guidelines 1993; Environmental Protection Act 1997; Environmental Protection Rules 1997 and the Guidelines Act, Rules and other regulations provide basic legal framework for al environment al assessment in Nepal. (IEE p.6)]
2. No hazardous materials such as asbestos, lead-based paints, chlorine gas, and toxic solvents shall be used to the extent feasible
3. Only certified wood and no illegal timber shall be used; where feasible, aluminum, glass, steel, plastic wood and other recycled materials rather than new wood shall be used
4. If pesticides, including fumigants, are procured, used, and disposed, a Pesticide Evaluation Report and Safe Use Action Plan (PERSUAP) and an Integrated Pest Management (IPM) plan shall be prepared and approved by the Bureau Environmental Officer (BEPO) prior to procurement, per 22 CFR 216.3(b), pesticide procedures
5. Mitigation measures shall be undertaken during land preparation and construction to control and reduce soil erosion, construction dust and debris, noise and traffic, and debris and waste shall be minimized and dispose properly
6. Construction activities shall be alert for historically and culturally significant artifacts and properly reported to authorities if found
7. Developing of water supplies shall first be studied for its potential adverse impact on the already obligate [stressed] water supply
8. Drinking water sources shall be tested prior to use to assure they meet drinking water standards, especially for arsenic and bacteria
9. sound principles of environmental management, including manure management, agricultural chemical management, and medical materials waste management and disposal, shall be implemented
10. To the extent feasible, intergraded pest management, integrated solid waste management, and resource recovery, reuse, recycling and composting shall be encouraged
11. To the extent feasible, program activities shall conform to the U.S. Green Building Council (USGBC) standards and guidelines for Leadership in Energy an Environmental Design (LEED – www.usgbc.org/LEED) , especially for water, wastewater, storm water,

and energy for use, reuse, and deficiency, as applicable to rehabilitation, new construction, and open areas, and consistent with U.S. President Executive Orders for Sustainable Design, Green Building and Energy Efficient Products (www.ofee.gov)

12. As feasible, care shall be exercised to reduce the carbon emissions to air from rehabilitation, construction, maintenance, and operation activities
13. A performance monitoring plan shall be prepared and implemented to comply with this Environmental Threshold Decision (ETD) and its approved IEE and shall be monitored and evaluated periodically by the USAID General Development Office (GDO) Team.

As applicable these conditions will be reported in the USAID/NFRP Quarterly Performance Reports. Mitigation measures will be submitted to the Evaluation Committee for its consideration and will be included in the Request for Approval sent to USAID for each subcontract. Copies of all Environmental analyses will be kept on file at the USAID/NFRP Program office, and electronic copies posted on the program's Intranet site, accessible to USAID/NFRP and USAID/Nepal staff. **The assessment and necessary mitigation guidelines will be provided to the subcontractor at the time of the award.** The subcontractor should be sufficiently trained on the Environmental Assessment and required mitigation measurements. . During implementation it is the responsibility of the subcontractor and the designated NFRP person to make sure that these guidelines are followed. If necessary the Environmental Assessment needs to be updated the subcontractor should inform NFRP and revise the Environmental Assessment. Mitigation and further guidelines will be provided by NRFP.

The NFRP team will follow the same procedures if the subcontract does not need an approval by USAID.

Environmental analyses will be completed following site visits by the program's engineer, agronomist, or other technicians. Approval for each subcontract activity will be provided only against a determination that the subcontract activity will result in minimal environmental impact, no impact at all, or positive environmental benefit. In rare cases where minimal impact is anticipated, the assessment will include proposed mitigation measures.

It is anticipated that most community infrastructure activities will result in no impact given their small-scale and many projects will consist of repair to structures already in existence. Most USAID/NFRP income generation activities will generate positive environmental benefits through the introduction and promotion of sustainable practices such as:

- Low cost drip irrigation;
- Proper land preparation;
- Use of organic fertilizer (livestock manure, composting);
- Crop rotation which will help break pest cycles;
- Integrated Pest Management including the use of live crop barriers, non-chemical pest traps, and biological control alternatives, where appropriate and feasible

In addition, no agrochemicals or non-organic fertilizers will be purchased under USAID/NFRP subcontracts.

N.5 Key Individual Certification Concerning Narcotics Offenses and Drug Trafficking

I hereby certify that within the last ten years:

1. I have not been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States or any other country concerning narcotic or psychotropic drugs or other controlled substances.

2. I am not and have not been an illicit trafficker in any such drug or controlled substance.

3. I am not and have not been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such drug or substance.

Signature: _____ Date: _____

Name: _____

Title/Position: _____

Organization: _____

Address: _____

Date of Birth: _____

NOTICE:

1. You are required to sign this Certification under the provisions of 22 CFR Part 140, Prohibition on Assistance to Drug Traffickers. These regulations were issued by the Department of State and require that certain key individuals of organizations must sign this Certification.

2. If you make a false Certification you are subject to U.S. criminal prosecution under 18 U.S.C. 1001.

3. It is important that all key personnel are signing this document. Key personnel include all staff members that are authorized to make a payment out of funds from this project.

N.6 Certification Regarding Terrorism Financing

Certification:

By signing and submitting this application, the prospective recipient provides the certification set out below:

1. The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3.
2. The following steps may enable the Recipient to comply with its obligations under paragraph 1:
 - a. Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not (i) appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's website :
<http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>
or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID to the Recipient.
 - b. Before providing any material support or resources to an individual or entity, the Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's website:
<http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>.
 - c. Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.
 - d. The Recipient also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.
3. For purposes of this Certification.
 - a. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."
 - b. "Terrorist act" means-
 - (i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site:

<http://untreaty.un.org/English/Terrorism.asp>); or

(ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

c. "Entity" means a partnership, association, corporation, or other organization, group or subgroup.

d. References in this Certification to the provision of material support and resources shall not be deemed to include the furnishing of USAID funds or USAID-financed commodities to the ultimate beneficiaries of USAID assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless the Recipient has reason to believe that one or more of these beneficiaries commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

e. The Recipient's obligations under paragraph 1 are not applicable to the procurement of goods and/or services by the Recipient that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, etc., unless the Recipient has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

Signed: _____
(Typed Name and Title)

Date _____

(Name of Organization)

N.7 Template for Subcontract modification

Instructions for subcontract modification

A modification of a subcontract is necessary if any condition needs to be changed in a subcontract. This can include a new timeline for the project, increased or reduced budget, change of key personnel if stated in the subcontract etc. Only an approved modification is the way to change these conditions in a subcontract. Before requesting a modification the project has to be assessed for its impact and results up to date. The requestor should discuss the revised conditions with the subcontractor and justify any changes in a brief memorandum. The justification should clearly state the reasons for the modification and describe the changes to the project.

If the scope of the project changes essentially, it is preferred to award a new subcontract. A new subcontract requires all steps that are described in this manual.

The requestor should consider if any new rules apply to that subcontract based on the change conditions. Some examples are:

- If a budget is added to the subcontract and the new total budget exceeds \$325,000, an approval from USAID is necessary for this subcontract and modification. Even if an approval was not necessary at the onset of the subcontract.
- If activities are added to the project, the environmental assessment needs to be redone in order to assess all activities of the project.
- If the new total budget exceeds the amount of \$300,000 per year, the organization has to provide an annual audit of the project.

The modification should refer to all relevant sections in the subcontract that need to be changed. It is important to check each section if any changes apply. Sometimes the date of performance or the budget is stated several times in the contract. The modification needs to capture all changes. Once the modification is final it needs to be signed by the authorized person at NFRP and the subcontractor representative.

Modification No. [\[Insert number\]](#)
 TO
 Subcontract Agreement # [\[Insert number\]](#)
 BETWEEN
 Fintrac Inc, AND [\[insert name of subcontractor\]](#)
 USAID/Fintrac PRIME CONTRACT EDH-I-00-05-00007-00 Task Order #4
 USAID/Nepal Flood Recovery Program (USAID – NFRP)

Contractor: Fintrac Inc.
 3077 Kronprindsens Gade 72
 St. Thomas, USVI 00802, USA
 Tel: (+1) 340 776-760
 Fax: (+1) 340 776-7601

Subcontractor: [\[Insert name\]](#)
[\[Insert address and phone number\]](#)

Type of Subcontract: Fixed Price Contract
Period of Performance: [\[Insert new time of performance\]](#)
Subcontract Amount: Amount prior to modification = [\[Insert amount\]](#)
 Change of Amount = [\[Insert amount\]](#)
 New total amount = [\[Insert amount\]](#)

Effective date of Modification [\[Insert date\]](#)
 New completion date [\[Insert date\]](#)

Description: [\[Insert brief description what and why the contract has been modified\]](#)
 The above numbered Sub-contractor agreement is hereby amended to:
 1. [\[Insert the section\(s\) and page number of the changed text\]](#)
[\[Insert the revised or added text\]](#)

EXCEPT AS SPECIFICALLY MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS
 REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF,
 The authorized officers of the respective parties do hereby set their hand.

Prime Contractor
 Fintrac Inc.

Sub-Contractor

 Joe Sanders, Chief of Party

 Name and Title:

 Date

 Date

[\[If available, insert supporting documents\]](#)