APPENDIX A

ARGONNE TERMS AND CONDITIONS
(For Labor-Hour and Time and Materials Contracts)

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1. **DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**

(a) **Applicability.** This clause applies to all contracts (except for commercial items) in excess of $50,000.

(b) **Definition.** Eligible employee means a current or former employee of a contractor or subcontractor employed by the contractor in any establishment that has been notified that it will be closed, or in which the employment of the eligible employee has been temporarily suspended, and who has been notified that the eligible employee will be terminated or laid off by reason of the closing or suspension of the establishment within 30 days after such notice is given.

(c) **Subcontracts.** The contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless the subcontractor agrees that it will provide preference in hiring an eligible employee to the extent practicable for work performed under the subcontract.

(d) **Requirements.** The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items) pursuant to 41 U.S.C. 403 expected to exceed $50,000.

2. **COVENANT AGAINST CONTINGENT FEES (MAY 2014)**

The Contractor shall furnish to the contracting agency all information required by the contracting agency to determine whether the contractor is entitled to an amount as a contingent fee or has otherwise recovered the full amount of the contingent fee.

3. **EQUAL OPPORTUNITY (MAR 2007)**

(a) **Definition.** United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Washington, D.C.

(b) **Competitive Bidding.** If, during any 12-month period (including the 12 months preceding the award of this contract), the contractor becomes the low bidder on any solicitation for contract or contracts through improper influence.

(c) **Contingent fee.** As used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or subcontract.

(d) **Improper influence.** As used in this clause, means any action that induces or tends to induce a Government employee or officer to give consideration to or act regarding a proposal that the contractor has submitted.

(e) **Subcontracts.** The contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless the subcontractor agrees that it will provide preference in hiring an eligible employee to the extent practicable for work performed under the subcontract.

(f) **Requirements.** The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items) pursuant to 41 U.S.C. 403 expected to exceed $50,000.

4. **EMPLOYMENT REPORTS VETERANS (JUL 2014)**

(a) **Definitions.** As used in this clause—

(i) Active duty wartime or campaign badge veteran

(ii) Active duty service period

(iii) Active duty service period (100%)

(iv) Active duty service period (50%)

(v) Active duty service period (25%)

(vi) Active duty service period (10%)

(vii) Active duty service period (5%)

(viii) Active duty service period (1%)

(ix) Active duty service period (0.5%)

(x) Active duty service period (0.1%)

(xi) Active duty service period (0.01%)

(xii) Active duty service period (0.001%)

(xiii) Active duty service period (0.0001%)

(xiv) Active duty service period (0.00001%)

(xv) Active duty service period (0.000001%)

(xvi) Active duty service period (0.0000001%)

(xvii) Active duty service period (0.00000001%)

(xviii) Active duty service period (0.000000001%)

(xix) Active duty service period (0.0000000001%)

(xx) Active duty service period (0.00000000001%)

(b) **Compliance.** The contractor shall submit VETS-100A Reports no later than September 30 of each year.

(c) **Number of veterans reported must be based on data known to the contractor when completing the VETS-100A.**

(d) **Subcontracts.** The contractor shall submit VETS-100A Reports no later than September 30 of each year.

5. **EQUAL OPPORTUNITY FOR VETERANS (JULY 2014)**

(a) **Definitions.** As used in this clause—

(i) Active duty wartime or campaign badge veteran

(ii) Active duty service period

(iii) Active duty service period (100%)

(iv) Active duty service period (50%)

(v) Active duty service period (25%)

(vi) Active duty service period (10%)

(vii) Active duty service period (5%)

(viii) Active duty service period (1%)

(ix) Active duty service period (0.5%)

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(xvii) Active duty service period (0.00000001%)

(xviii) Active duty service period (0.000000001%)

(xix) Active duty service period (0.0000000001%)

(xx) Active duty service period (0.00000000001%)

(b) **Compliance.** The contractor shall submit VETS-100A Reports no later than September 30 of each year.

(c) **Subcontracts.** The contractor shall include the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.


(a) **Applicability.** This clause applies to contracts equal to or greater than $10,000.

(b) **Compliance.** The contractor shall notify each employee of their rights under the NLRA, the NLRA, and any other applicable laws.

(c) **Subcontracts.** The contractor shall include the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
8. EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)

(a) Definitions. As used in this clause—

“Commercially available-off-the-shelf (COTS) item”—

(1) Any item of supply that—

(i) Is for—

(A) Is for—

(i) A commercial item (as defined in paragraph (1) of the definition at 210.1);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; or

(ii) Does not include any item defined at 48 C.F.R. 401.202(c), such as agricultural products and petroleum products. Per 48 C.F.R. 262.211(b), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship, and includes waste, bulk, packed, and unpacked cargo, forming homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or SeaBarge cargos, is subject to mark and count requirements.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is assigned to a contract, and is therefore, ceases to be bulk cargo.

“Subcontract” means any contract, as defined in 2.101, and includes any contract entered into by a subcontractor to furnish supplies or services for performance of a prime or subcontract or a contract. It includes but is not limited to purchase orders, and changes and modifications applicable to the contract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or other subcontractor.


(b) Enrollment and verification requirements.

(1) If the Contractor, as defined at 2.101, is identified as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of the award of the contract.

(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to verify employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the hire date (but see paragraph (b)(2) of this section).

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, verify employment eligibility prior to commencement of work. Failure to comply may subject the Contractor to administrative, civil, or criminal penalties.

(2) If the Contractor, as defined at 2.101, is not identified as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees. Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the hire date (but see paragraph (b)(3) of this section).

(ii) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the hire date (but see paragraph (b)(3) of this section).
Clause 00005

CLASSIFICATION/DECLASIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy’s regulations and mandatory DOE directives which apply to work involving the classification and declasification of information, documents, or materials. In this section, “information” means facts, data, or knowledge itself; “document” means the physical medium on or in which information is recorded; and “material” means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is “Restricted Data” and “Formerly Restricted Data” (classified under the Atomic Energy Act of 1946, as amended) and the “National Security Information” (classified under Executive Order 12958 or prior to that date).

1. DEFINITIONS

(a) Formerly Restricted Data. The term “Formerly Restricted Data” means information that has been determined to be special nuclear material, but does not include source material; or (2) has been determined, pursuant to Executive Order 12958, Classified National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(b) National Security Information. The term “National Security Information” means information that has been determined, pursuant to Executive Order 11408 or Executive Order 11931, to require protection and, if so determined, to be classified; and “Information” means any material artificially enriched by any of the foregoing, but does not include source material.

2. PERIODIC ACCESS REVIEW

(a) The contractor shall not permit any individual to have access to any classified or special nuclear material, or classified documents, on a regular basis unless that individual has been determined to be special nuclear material, but does not include source material; or (2) has been determined, pursuant to Executive Order 12958, Classified National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(b) In collecting and using this information to make a determination as to whether it is appropriate to assign a classified or special nuclear material to an employee, the contractor must comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual’s information, such as Title II of the Privacy Act of 1974, Protecting Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as the Age Discrimination in Employment Act, including with respect to pre- and post-access of employment and availability of retirement benefits.

(c) In addition, to the review of an individual, the contractor must ensure that any document or material that may contain classified information is reviewed in accordance with classification regulations including mandatory DOE directives and classified/declasification guidance furnished to the contractor by the Department of Energy to protect any classified information which is not addressed in classification/declasification guidance, but whose sensitivity appears to warrant classification.

3. CLEAN AIR AND WATER (APR 1894)

(a) “Air Act,” as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

(b) “Clean air standards,” as used in this clause, means –

(1) Any enforceable rule, regulation, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or in accordance with any Federal, State, or local laws, regulations, Executive Orders, including those governing the processing and privacy of an individual’s information.

(2) Any federal, State, or local law, regulation, Executive Order, or court order which has been found to be inapplicable to select an uncleared applicant or uncleared employee to a position containing classified information.

(3) To insert the substance of this clause into any nonexempt subcontract, including this subcontract, the term “Contractor” shall mean Subconctactor and the term “contract” shall mean subcontract.

(c) “Facility,” as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of a contract or subcontract.

(d) “Water Act,” as used in this clause, means Clean Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(e) “Current water standards,” as used in this clause, means enforceable limitation, condition, prohibition, work practices, or other requirements promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or applicable to any permit issued by the Administrator, or a designee, of the Environmental Protection Agency, that otherwise authorize the discharge of pollutants.

(f) “Specifications,” as used in this clause, means applicable laws, regulations, and Executive Orders, including those

(i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the contractor or any person under the contractor’s control in connection with work undertaken under this contract, is a criminal offense, including those governing the processing and privacy of an individual’s information.

(ii) Foreign Ownership, Control, or Influence.

(1) The contractor shall immediately provide the cognizant security office written notice of any change in ownership, control, or influence over the contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certification of Foreign Ownership, Control, or Influence, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the cognizant security office, the Secretary of Energy, and/or the Department of Justice, shall be also furnished concurrently to the Contracting Officer.

(2) This contractor shall immediately provide the cognizant security office written notice of any change in ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security, and includes the requirement for periodic inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 304 and section 306 of the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract.

(3) No portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency’s list of violating facilities, unless the contractor is in material violation of an environmental standard at the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the list.

(4) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(5) To insert the substance of this clause into any nonexempt subcontract, including this subcontract.

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14. TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(Appplies to contracts exceeding $100,000 (including all options)

(a) Except as otherwise specified in the contract, the Contractor, as operator or owner of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(e) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) 42 U.S.C. 11232(a) and (g), and section 607 of the Pollution Prevention Act of 1990 (PPA) 42 U.S.C. 13210.

The Contractor shall, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -leased facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 C.F.R. Part 372.
(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(B) of EPCRA, 42 U.S.C. 11232(b)(1)(B).
(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(b) of EPCRA, 42 U.S.C. 11232(b) (including the alternate thresholds at 40 C.F.R. Part 372.27, provided an appropriate certification form has been filed with EPA).
(4) The facility does not fall within Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors.

(i) Major group code 10 (except 1011, 1081, and 1094).
(ii) Major group code 12 (except 1231).
(iii) Major group code 20 through 39.
(iv) Industry code 4111, 4131, or 4839 (limited to facilities that combust coal and/or oil for the purposes of generating electricity or producing steam in commercial operations).
(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), of 5169, 5171, 7389 (limited to facilities primarily engaged in solvent recovery services on a contract fee basis).
(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its facilities are no longer exempt from filing Form R, the Contractor shall notify the Laboratory Procurement Representative within 10 days of such change, stating the new filing requirement.

(d) The Contractor shall notify the Laboratory Procurement Representative; and
(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt shall—

(1) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
(2) Continue to file the annual Form R for the contract year.

(e) The Laboratory Procurement Representative may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical reporting requirements.

(f) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—

(1) For competitive subcontracting of $50,000 or less, submit one legible copy of a rated on-board ocean bill of lading for each shipment; and
(2) Furnished a copy of this bill of lading to the Government or the Laboratory shall be clearly marked and labeled as required by the latest revision of MIL-STD-129 in effect on the date of the contract.

(g) The Contractor, in each subcontract under this contract involving international transportation, shall furnish the Contractor's Procurement Representative with a bill of lading in Form R to be transmitted to the responsible federal agency for filing.

15. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Laboratory Procurement Representative or designee, in writing, *days prior to the delivery of, or prior to completion of any servicing required by this contract of items containing radioactivity:

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1946, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract; and
(2) Other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.

Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the quantity and method of manufacture, and the date of manufacture. Such notice shall be submitted to the Laboratory Procurement Representative or designee 10 days prior to the delivery of items containing radioactivity.

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material, the Contractor shall notify the Laboratory Procurement Representative or designee 10 days prior to the delivery of items containing radioactivity.

(c) The Contractor shall notify the Laboratory Procurement Representative or designee 10 days prior to the delivery of items containing radioactivity 10 days prior to the delivery of items containing radioactivity.

(d) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such materials, parts, or subassemblies are delivered to the Government or the Laboratory shall be clearly marked and labeled as required by the later revision of MIL-STD-129 in effect on the date of the contract.

(e) All contracts, including this paragraph (d), shall be included in and applicable to all subcontract agreements for radioactive materials and the contracts in paragraph (a) of this clause.

16. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)

(a) Definition. As used in this clause—
(1) "Energy-efficient product"—

(2) "EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11232(a) and (g), and section 607 of the Pollution Prevention Act of 1990 (PPA) 42 U.S.C. 13210.

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® listed products or FEMP-designated products) at the time of contract award, for products that are—

(1) Delivered;
(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(3) Furnished to the Contractor for use by the Contractor; or
(4) Acquired by the Contractor for use by the Contractor's subcontractors.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for—

(1) ENERGY STAR® at http://www.energystar.gov/products; and

17. SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

(1) By the Contractor under a construction contract; or
(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $500.00, unless—

(i) the Contractor is at least 5 percent of the $500.00 amount; or
(ii) the Contractor is at least 5 percent of the $500.00 amount.

(c) Contractors shall submit the above referenced transportation documents to—

[To be filled in by Laboratory Procurement Representative]

18. PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003)

(a) Definitions. As used in this clause—

International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 41.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(F/A-18) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available.

(c) The Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, has determined that the use of foreign air carriers results in avoidable expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation of personnel or property.

(d) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall provide evidence to the Government or the Laboratory that such transportation was necessary.


(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessels, are acquired with—

(1) Appropriations made available, or derived from funds that are made available, under the Act of October 23, 1954 (46 U.S.C. 1202).
(2) Funds provided for the construction, purchase, or upgrade of any equipment, materials, or commodities.
(3) Appropriations made available, or derived from funds that are made available, under the Act of October 23, 1954 (46 U.S.C. 1202).

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessels.

(c) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to—

(1) The Contracting Officer, and
(2) The Office of Cargo Preference Marine Administration (MAR-SAR) 400 Seventh Street, SW Washington, DC 20590

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(i) The Contractor shall furnish these bills of lading to the Contractor's Procurement Representative with the following information:
(1) Name of U.S.-flag Government agency.
(2) Name of vessel.
(3) Vessel flag of registry.
(4) Port of loading:
(5) Port of discharge:
(6) Description of commodity.
(7) Gross weight in pounds and cubic feet involved.

(ii) The Contractor shall obtain a certified copy of the Ocean Bill of Lading.

(d) The Contractor shall insert the substance of this clause, including this paragraph (e), in each subcontract or purchase order under this contract that may involve international transportation.
To the extent that Federal law does not exist and State law could become applicable to this contract, the law of Illinois shall apply.

This Clause Does Not Apply To Small Business Concerns.

A. In most cases, the appropriate Contractor is the Contractor that awarded the subcontract.

B. Business development organizations.

C. Whether service-disabled veteran-owned small business concerns were solicited and if not, why not;

D. Whether HUBZone small business concerns were solicited and if not, why not;

E. Whether small disadvantaged business concerns were solicited and if not, why not;

F. Whether veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

G. If applicable, the reason award was not made to a small business concern.

H. Whether small disadvantaged business concerns were solicited and if not, why not;

I. Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe then the appropriate Contractor(s) to count the subcontract toward its small business and small disadvantaged business subcontracting goals.

J. Where the subcontractor is a subcontractor of an ANC to a prime contractor, the subcontractor shall be counted toward the subcontracting goals for small business and small disadvantaged business concerns.

K. If the ANC or Indian tribe does not delegate more than one Contractor to count the subcontract toward its small business and small disadvantaged business subcontracting goals.

L. Whether the contractor is a subcontractor of an ANC to a prime contractor, the subcontractor shall be counted toward the subcontracting goals for small business and small disadvantaged business concerns.

M. Whether the contractor is a subcontractor to the ANC or Indian tribe.

N. Whether the contractor is a subcontractor to the ANC or Indian tribe.

O. Whether the contractor is a subcontractor to the ANC or Indian tribe.

P. Whether the contractor is a subcontractor to the ANC or Indian tribe.

Q. Whether the contractor is a subcontractor to the ANC or Indian tribe.

R. Whether the contractor is a subcontractor to the ANC or Indian tribe.

S. Whether the contractor is a subcontractor to the ANC or Indian tribe.

T. Whether the contractor is a subcontractor to the ANC or Indian tribe.

U. Whether the contractor is a subcontractor to the ANC or Indian tribe.

V. Whether the contractor is a subcontractor to the ANC or Indian tribe.

W. Whether the contractor is a subcontractor to the ANC or Indian tribe.

X. Whether the contractor is a subcontractor to the ANC or Indian tribe.

Y. Whether the contractor is a subcontractor to the ANC or Indian tribe.

Z. Whether the contractor is a subcontractor to the ANC or Indian tribe.

aa. Whether the contractor is a subcontractor to the ANC or Indian tribe.

bb. Whether the contractor is a subcontractor to the ANC or Indian tribe.

cc. Whether the contractor is a subcontractor to the ANC or Indian tribe.

dd. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ee. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ff. Whether the contractor is a subcontractor to the ANC or Indian tribe.

gg. Whether the contractor is a subcontractor to the ANC or Indian tribe.

hh. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ii. Whether the contractor is a subcontractor to the ANC or Indian tribe.

jj. Whether the contractor is a subcontractor to the ANC or Indian tribe.

kk. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ll. Whether the contractor is a subcontractor to the ANC or Indian tribe.

mm. Whether the contractor is a subcontractor to the ANC or Indian tribe.

nn. Whether the contractor is a subcontractor to the ANC or Indian tribe.

oo. Whether the contractor is a subcontractor to the ANC or Indian tribe.

pp. Whether the contractor is a subcontractor to the ANC or Indian tribe.

qq. Whether the contractor is a subcontractor to the ANC or Indian tribe.

rr. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ss. Whether the contractor is a subcontractor to the ANC or Indian tribe.

tt. Whether the contractor is a subcontractor to the ANC or Indian tribe.

uu. Whether the contractor is a subcontractor to the ANC or Indian tribe.

vv. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ww. Whether the contractor is a subcontractor to the ANC or Indian tribe.

xx. Whether the contractor is a subcontractor to the ANC or Indian tribe.

yy. Whether the contractor is a subcontractor to the ANC or Indian tribe.

zz. Whether the contractor is a subcontractor to the ANC or Indian tribe.

AA. Whether the contractor is a subcontractor to the ANC or Indian tribe.

BB. Whether the contractor is a subcontractor to the ANC or Indian tribe.

CC. Whether the contractor is a subcontractor to the ANC or Indian tribe.

DD. Whether the contractor is a subcontractor to the ANC or Indian tribe.

EE. Whether the contractor is a subcontractor to the ANC or Indian tribe.

FF. Whether the contractor is a subcontractor to the ANC or Indian tribe.

GG. Whether the contractor is a subcontractor to the ANC or Indian tribe.

HH. Whether the contractor is a subcontractor to the ANC or Indian tribe.

II. Whether the contractor is a subcontractor to the ANC or Indian tribe.

JJ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

KK. Whether the contractor is a subcontractor to the ANC or Indian tribe.

LL. Whether the contractor is a subcontractor to the ANC or Indian tribe.

MM. Whether the contractor is a subcontractor to the ANC or Indian tribe.

NN. Whether the contractor is a subcontractor to the ANC or Indian tribe.

OO. Whether the contractor is a subcontractor to the ANC or Indian tribe.

PP. Whether the contractor is a subcontractor to the ANC or Indian tribe.

QQ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

RR. Whether the contractor is a subcontractor to the ANC or Indian tribe.

SS. Whether the contractor is a subcontractor to the ANC or Indian tribe.

TT. Whether the contractor is a subcontractor to the ANC or Indian tribe.

UU. Whether the contractor is a subcontractor to the ANC or Indian tribe.

VV. Whether the contractor is a subcontractor to the ANC or Indian tribe.

WW. Whether the contractor is a subcontractor to the ANC or Indian tribe.

XX. Whether the contractor is a subcontractor to the ANC or Indian tribe.

YY. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ZZ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

AAA. Whether the contractor is a subcontractor to the ANC or Indian tribe.

BBB. Whether the contractor is a subcontractor to the ANC or Indian tribe.

CCC. Whether the contractor is a subcontractor to the ANC or Indian tribe.

DDD. Whether the contractor is a subcontractor to the ANC or Indian tribe.

EEE. Whether the contractor is a subcontractor to the ANC or Indian tribe.

FFF. Whether the contractor is a subcontractor to the ANC or Indian tribe.

GGG. Whether the contractor is a subcontractor to the ANC or Indian tribe.

HHH. Whether the contractor is a subcontractor to the ANC or Indian tribe.

III. Whether the contractor is a subcontractor to the ANC or Indian tribe.

JJJ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

KKK. Whether the contractor is a subcontractor to the ANC or Indian tribe.

LLL. Whether the contractor is a subcontractor to the ANC or Indian tribe.

MMM. Whether the contractor is a subcontractor to the ANC or Indian tribe.

NNN. Whether the contractor is a subcontractor to the ANC or Indian tribe.

OOO. Whether the contractor is a subcontractor to the ANC or Indian tribe.

PPP. Whether the contractor is a subcontractor to the ANC or Indian tribe.

QQQ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

RRR. Whether the contractor is a subcontractor to the ANC or Indian tribe.

SSS. Whether the contractor is a subcontractor to the ANC or Indian tribe.

TTT. Whether the contractor is a subcontractor to the ANC or Indian tribe.

UUU. Whether the contractor is a subcontractor to the ANC or Indian tribe.

VVV. Whether the contractor is a subcontractor to the ANC or Indian tribe.

WWW. Whether the contractor is a subcontractor to the ANC or Indian tribe.

XXX. Whether the contractor is a subcontractor to the ANC or Indian tribe.

YYY. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ZZZ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

AAA. Whether the contractor is a subcontractor to the ANC or Indian tribe.

BBB. Whether the contractor is a subcontractor to the ANC or Indian tribe.

CCC. Whether the contractor is a subcontractor to the ANC or Indian tribe.

DDD. Whether the contractor is a subcontractor to the ANC or Indian tribe.

EEE. Whether the contractor is a subcontractor to the ANC or Indian tribe.

FFF. Whether the contractor is a subcontractor to the ANC or Indian tribe.

GGG. Whether the contractor is a subcontractor to the ANC or Indian tribe.

HHH. Whether the contractor is a subcontractor to the ANC or Indian tribe.

III. Whether the contractor is a subcontractor to the ANC or Indian tribe.

JJJ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

KKK. Whether the contractor is a subcontractor to the ANC or Indian tribe.

LLL. Whether the contractor is a subcontractor to the ANC or Indian tribe.

MMM. Whether the contractor is a subcontractor to the ANC or Indian tribe.

NNN. Whether the contractor is a subcontractor to the ANC or Indian tribe.

OOO. Whether the contractor is a subcontractor to the ANC or Indian tribe.

PPP. Whether the contractor is a subcontractor to the ANC or Indian tribe.

QQQ. Whether the contractor is a subcontractor to the ANC or Indian tribe.

RRR. Whether the contractor is a subcontractor to the ANC or Indian tribe.

SSS. Whether the contractor is a subcontractor to the ANC or Indian tribe.

TTT. Whether the contractor is a subcontractor to the ANC or Indian tribe.

UUU. Whether the contractor is a subcontractor to the ANC or Indian tribe.

VVV. Whether the contractor is a subcontractor to the ANC or Indian tribe.

WWW. Whether the contractor is a subcontractor to the ANC or Indian tribe.

XXX. Whether the contractor is a subcontractor to the ANC or Indian tribe.

YYY. Whether the contractor is a subcontractor to the ANC or Indian tribe.

ZZZ. Whether the contractor is a subcontractor to the ANC or Indian tribe.
each subcontractor. Contractors having commercial plans need not comply with this requirement.

d. In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

1. Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, women-owned small business, and contains a subcontracting plan. For DoD, a consolidated report shall be

2. Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

3. Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

4. Provide notice to subcontractors concerning penalties and remedies for representations of business status as required by this clause. The representations shall be included in the existing subcontract plan.

5. Include the substance of this clause, including this paragraph (b), in all subcontract plans. The contractor shall, in addition, obtain from each subcontractor a statement certifying to the accuracy of the representations and the data provided by subcontractors.

6. Maximum dollar thresholds for subcontract awards are to be included as part of or all of a goal contained in the subcontractor’s subcontracting plan.

7. Provide in each subcontractor’s subcontracting plan any information reasonably required to explain the subcontractor’s estimating process such as the number of technical personnel, the level of detail of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 35.408, Table 15-2 to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors and other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any additional data considered in the preparation of the estimate.

8. Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data. The contractor shall immediately give any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

22. PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2012)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make available payments to its subcontractors. The contractor may not exceed the maximum dollar thresholds for subcontract awards.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

23. NOTICE TO THE LABORATORY OF LABORATORY DISPUTES (OCT 1999)

(a) If the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give, notice including all relevant information, to the Laboratory.

(b) The contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract which another subcontractor has under this contract; that each subcontract shall provide that in the event its timely performance is delayed or threatened by any labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the contractor, as the case may be, of all relevant information concerning the dispute.

24. REPORTS (OCT 1999)

The contractor shall furnish intermediate reports to the Laboratory from time to time requested, in such form and number as may be required by the Laboratory, summarizing the activities of the contractor under this contract and shall make such final reports as may be required by the Laboratory. All reports delivered to the Laboratory under this contract shall contain a signature page which will identify the persons preparing the report and the persons approving the report.

25. RIGHTS TO PROPOSAL DATA (AUG 2001)

It is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

26. SUBCONTRACTOR COST OR PRICING DATA (OCT 2010)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing). In accordance with FAR 35.408, Table 15-2 to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors and other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any additional data considered in the preparation of the estimate.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract, or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data—Modification.

27. SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 2010)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4; and

(2) Be subject to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually
or by specific identification in writing, in accordance with FAR 15.408. Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and other methods used, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in its description in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraphs (B) and (C) of this clause were complete, accurate, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract, complete, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

28. PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because--

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) If the Contractor determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(1) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified, complete, accurate, and current as certified in the Certificate of Current Cost or Pricing Data;

(2) The Contractor or subcontractor was not aware of, or did not know of, the existence of defective certified cost or pricing data;

(3) The Contractor or subcontractor could not have detected, avoided, or corrected any defective cost or pricing data;

(d) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined by the Administrator for Federal Acquisition Regulations will be made from the payment to the subcontractor in the amount, plus applicable overhead and profit markup, by which the subcontractor was not itself affected by defective certified cost or pricing data.

(e) If any reduction in the contract price under this clause reduces the price for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is made.

(f) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment shall be computed from the date(s) of overpayment to the date the Government is repaid by the Contractor at the applicable underpayment rate prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(g) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

30. LIMITATIONS ON PASS-THROUGH CHARGES (AUG 2009)

(a) This clause applies to contracts in excess of $1,000,000. As used in this clause—

(1) “Added value” means the Contractor performs subcontract management functions that the Contracting Officer determines a benefit to the Government (e.g., processing orders of parts or labor, providing administrative support, performing contract administration and management functions with sufficient documentation, coordinating deliveries, performing quality assurance functions).

(2) “Excessive pass-through charge” means the Contractor charges the Government in excess of the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on the following:

(3) “No or negligible value” means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery order).

(4) “Subcontract” means any fixed-price or cost-reimbursement subcontract under this contract or subcontract.

(b) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

(1) The date, circumstances, and source of the order; and

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery order).

(c) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value of the subcontractor effort.

(d) Recovery of excessive pass-through charges shall be made in accordance with the following:

(e) Access to records:

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit at the Contractor’s offices (as defined at FAR 52.215-1(a)) to determine whether the Contractor, subcontractor, or tiers, has incurred, billed, or claimed excessive pass-through charges.

(f) Flowdown. The Subcontractor shall insert the substance of this clause, including this paragraph (f), in all subcontract that exceed the simplified threshold, except if the contract is with DoD, then insert in all cost-reimbursement and fixed-price subcontracts, except those identified in 15.408(b)(5)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(g) Changes (JUNE 2007)

(1) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including—

(2) In the method or manner of performance of the work;

(3) In the Government furnished property; and

(4) Directing acceleration in the performance of the work.

(2) Any other written or oral order (which, as used in this paragraph (b), includes direction, written notice, instruction, interpretation, direction, or any action by the contractor that causes a change) shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

(i) The date, circumstances, and source of the order; and

(ii) That the Contractor regards the order as a change order.

(3) Except as provided in this paragraph (b), the end product of the Contracting Officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any change order, the Contractor shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made.
for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

32. EXCUSABLE DELAYS (OCT 1999)

(a) Except for defaults of subcontractors at any tier, the contractor shall not be in default because of any failure to perform under this contract if the failure arises from causes beyond the control and without the fault or negligence of the contractor. Examples of these causes are (1) acts of God, (2) acts of public authority, (3) acts or omissions of the contractor's competitors, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) embargoes, and (10) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor.

(b) If the failure to perform is caused by the default of the contractor at any tier to pay or perform, then if the cause of the failure was beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtained from other sources;
(2) The contractor notified the vendor in writing to perform such supplies or services from the other source; or
(3) The contractor failed to comply reasonably with any order.

(c) Upon request of the contractor, the Laboratory shall ascertain the facts and extent of the failure. If the Laboratory determines that any failure to perform results from one or more of the causes above, the deficiency schedule shall be revised, subject to the rights of the Laboratory under the termination clause of this contract.

33. INSPECTION (OCT 1999)

Definitions.

"Contractor's managerial personnel," as used in this clause, means any of the contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

1. All or substantially all of the contractor's business;
2. All or substantially all of the contractor's operation at any one plant or separate location at which the contract is being performed; or
3. A separate and complete major industrial operation connected with the performance of the contract.

"Materials," as used in this clause, includes data when the contract does not contain the Warranty Data clause.

The Contractor shall provide and maintain an inspection system acceptable to the Laboratory covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the contractor shall be maintained and made available to the Laboratory during contract performance and for as long afterwards as the contract requires.

The contractor shall, and has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all times and places, including the period of performance. The contractor may perform such inspections and tests as the Laboratory deems necessary in any event before or during termination or final settlement of any controversy or claim relating to this contract.

The Laboratory shall perform inspections and tests in a manner that will not unduly delay the work.

If the contractor performs inspections or tests in a manner that will not unduly delay the work, the contractor shall—

1. Notify the Laboratory of the inspection or test performed;
2. Give the Laboratory the names and a summary of any test or inspection taken;
3. Unless otherwise specified in the contract, the Laboratory shall accept or reject services and materials at the place of delivery as prompt as practicable after delivery, and they shall be promptly punishable if not delivered with 60 days after the date of delivery, unless otherwise specified.

At any time during contract performance, but not later than 6 months (or such other time as may be agreed to in the contract) after acceptance of the supplies or materials delivered under this contract, the Laboratory may require the contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacing or correcting any defective service or materials under the terms of the contract, but the "hourly rate" for labor hours incurred in the replacement or correction of any defective service or materials shall be reduced to the rate attributable to the time for any labor hours performed by the contractor shall not exceed the rate attributable to the time for any labor hours performed by the contractor.

If the contractor fails to provide a complete explanation of the incentive fee or profit when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the amount of each incentive or profit element, and a summary of the actual and anticipated performance.

Unless the consent or approval specifically provides otherwise, neither consent by the Laboratory Procurement Official to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

1. Of the acceptability of any subcontract terms or conditions; or
2. Of the allowability of any cost incurred under this contract;
3. To relieve the Contractor of any responsibility for performing this contract.

36. ASSIGNMENT (OCT 1999)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the Laboratory. The Laboratory may assign the whole or any part of this contract to the Government or its designated. The Laboratory may assign this contract to a successor operator of the Laboratory.

37. SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2014)

(a) Definitions. As used in this clause—

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definition 52.212-1, Commercial item.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.202-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3709), if the subcontract exceeds $5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal...
criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.202-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jan 2010) (Section 1553 of Pub. L. 111-5), if the use of Government property is in its possession, it shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control, tracking, and accountability of Government property, and shall provide for the periodic review of the Contractor's control and accountability of Government property, and shall determine the appropriate level of contractor's performance management to be implemented in the event of any changes in the specifications or plans for the asset.

(iii) 52.219-8, Utilization of Small Business Concerns (May 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracts. If the subcontract (except subcontracts to small business concerns) exceeds $600,000, the amount of the subcontract shall not exceed 65 percent of the total subcontract amount.


(vi) 52.226-40, Notification of Employer Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.226-40.

(vii) 52.226-50, Contracting for Property or Services (Feb 2009) (22 U.S.C. 7104(g)).


(ix) 52.226-49, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.223-40.

(x) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2008) (46 U.S.C. App. 1241 and 10 U.S.C. 2351), if flow down is required in accordance with paragraph (c) of FAR clause 52.247-64.

38. GOVERNMENT PROPERTY (AUG 2010)

(a) Definitions. As used in this clause—

"Acquisition cost" means the cost to acquire a tangible asset including the purchase price and costs necessary to prepare the asset for use.

"Property Administrator" means an authorized representative of the Laboratory Procurement Office, as determined by the Administrator of the General Services Administration (GSA).

"Property management." During the period of performance, the Contractor shall document and disclose any changes to the property management system to the Government Administrator prior to implementation.

"Property records" means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

"Purchase" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

"Real property" means any property identified in accordance with law as real property. It includes both Government-furnished and Contractor-acquired property. Government property does not include intellectual property and software.

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"Property records" means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

"Purchase" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.
(f) Contractor plans and systems.

(1) Contractors shall establish and implement property management plans, systems, and procedures in the contract, program, site, or entity level to enable the following outcomes:

(i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) Receipt of Government Property. The Contractor shall receive Government property (document the receipt), record information necessary to meet the record requirements of paragraphs (f)(ii)(A)-(f)(ii)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, or other identification), and manage any discrepancies incident to shipment.

(A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as the cause or condition and a recommended course(s) of action, if shortages, shortfalls, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for shortages, shortfalls, shortages and/or other discrepancies discovered upon receipt, in accordance with the procedures documented for the Contractor's system. Such reports shall, at a minimum, contain the following information:

(1) The name, part number and description, manufacturer, model number, and, if applicable, National Stock Number.

(2) Quantity received (or fabricated), issued, and balance on-hand.

(3) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(4) Unit of measure.

(5) Accountable contract number or equivalent code designation.

(6) Location.

(7) Disposition.

(8) Posting reference and date of transaction.

(9) Date placed in service.

(iii) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt and issue of Government property (e.g., receipt, issue, and usage records). The Contractor shall provide and shall ensure appropriate flow down of contract terms and supporting documentation that pertains to Government property.

(iv) Physical Inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a final inventory requirement).

(v) Physical Inventory. The Contractor shall prepare and maintain, at the Contractor's expense, a record of all property that is acquired consistent with its engineering, production planning, and property control operations.

(vi) Subcontractor control.

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., the contractor's assumption of liability for loss, theft, damage or destruction of Government property).

(B) The Contractor shall ensure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vii) Reports. The Contractor shall maintain a process to create and provide reports of discrepancies; loss, theft, damage or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Property Administrator. The Contractor shall establish and maintain procedures necessary to assess its property management practices or the loss, theft, damage or destruction of Government property furnished or acquired under this contract, including reasonable inventory adjustments. The Contractor shall promptly perform and report to the Property Administrator any corrective action taken or to be taken to prevent recurrence.

(viii) Systems analysis.

(1) The Government shall have access to the Contractor's premises and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and reports pertaining to Government property. This access includes all site locations and, with the Contractor's consent, subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be accurately available for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan which shall be requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(3) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and reports pertaining to Government property.

(4) Contracting for Property. The Contractor is required to contract for property as directed by its Property Administrator.

(g) Systems analysis.

(1) The Contractor shall establish and maintain Government accounting source data, as may be necessary to provide periodic reports of acquisition of acquisitions and disposals of material and equipment.

(2) The Contractor shall establish and maintain Government accounting source data, as may be necessary to provide periodic reports of acquisition of acquisitions and disposals of material and equipment.

(3) The Contractor shall establish and maintain Government accounting source data, as may be necessary to provide periodic reports of acquisition of acquisitions and disposals of material and equipment.
under paragraph (j)(2)(A) of this clause, property that was not purchased under paragraph (j)(2)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(C) of this clause.

(3) Inventory disposal schedules.

(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify:

(A) Government-furnished property that is no longer required for performance of this contract, provided the Contractor does not require the Government to furnish that property for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (j)(2) of this clause, which is no longer required for performance of that contract; and

(C) Terminated Government property.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has notified the Contractor that the contract requires electronic submission of inventory disposal schedules, the Contractor shall provide separate inventory disposal schedules for:

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (e.g., computers, computer components, peripheral equipment, and related items);

(E) Precious metals in raw or bulk form;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear waste.

(iv) The Contractor shall provide the information required by FAR 22.245-1(1) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals, the type of metal and estimated weight.

(D) For hazardous material of property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temperature, specification (commercial or Government) and dimensions (thickness, width, and length).

(v) Property not in the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(4) Submission requirements. The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer as follows:

(i) 30 days following the Contractor's determination that a Government property item is no longer required for performance of this contract;

(ii) 30 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract delivery or performance; or

(iii) 180 days, or such longer period as may be approved by the Laboratory Procurement Officer following contract termination in whole or in part.

(5) Corrections. The Plant Clearance Officer may—

(i) Require the Contractor to correct an inventory disposal schedule.

(ii) Request the Contractor to provide additional documentation in support of the schedule.

(6) Postdisposition submissions. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intention to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(7) Storage.

(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Contractor's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule shall entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposal instructions. If approval is granted, any costs incurred by the Contractor in removing the property or transporting it shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any of its responsibilities for storing such property under this paragraph.

(8) Disposition instructions.

(i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver, inspect, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Laboratory Procurement Official or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(iii) The Laboratory Procurement Official may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (j)(4) of this clause.

(9) Disposal proceeds. As directed by the Laboratory Procurement Official, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) Subcontractor inventory disposal schedules. The Contractor shall require its subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(4) of this clause.

(k) Abandonment of Government property.

(1) The Contractor shall abandon sensitive Government property or termination inventory without the Contractor's written consent.

(2) The Contractor, upon notice to the Government, may abandon any non-sensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.

(3) The Contractor has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unavailable for the intended use, the Government property is subject to an equitable adjustment under paragraph (j)(4) of this clause, or may properly include restoration or rehabilitation costs.

(l) Communications. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)
48. TERMINATION (COST-REIMBURSEMENT) (May 2004)

(a) The Laboratory may terminate performance of work under this contract in whole or, from time to time, in part. If:

(1) The Laboratory Procurement Official determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Laboratory Procurement Official shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government. The effective date of termination shall be specified in the Notice of Termination. In the event of a termination for default, the Contractor will be entitled to the same remedies as are provided by law for the recovery of the balance due for the work completed; however, in the event of a termination for convenience, the Contractor's claim for the balance of the Contract Price and for any allowable costs and charges (including interest) shall inure to and be for the sole benefit of the Laboratory.

(c) The Contractor shall, within 10 days after receipt of the Notice of Termination, submit to the Contracting Officer a statement setting forth the amount due under this clause. The Contracting Officer, after liquidation of all accounts, shall make payment to the Contractor in accordance with the terms of the contract.

49. COST OF COMPONENTS

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free end product) and any applicable tax on the component will be allowable.

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

43. WALSH-HEALEY PUBLIC CONTRACTS ACT (OCT 2010)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all applicable statutes and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

44. INTEGRITY OF UNIT PRICES (OCT 2010)

This clause applies to all subcontracts that exceed $150,000

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within the proposal on a basis that ensures that unit prices are in proportion to the base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in basic cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or of which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 43; services where supplies are not required; commercial items; and petroleum products.

45. WARRANTY OF SERVICES (MAY 2001)

(a) Definition. “Acceptance,” as used in this clause, means the act of an authorized representative of the Laboratory by which the Laboratory assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of this contract.

(b) Notwithstanding acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will be, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Laboratory Procurement Official shall give written notice of any defect or nonconformity to the Contractor within 30 days from the date of acceptance by the Laboratory. This notice shall state either—

(1) That the Contractor shall correct or reperform any defective or nonconforming services;

(2) That the Laboratory does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, the Contractor shall correct or reperform the services to the satisfactory satisfaction of the Laboratory. If the Laboratory Procurement Official, the Laboratory's representatives, or the Laboratory's agents or consultants reasonably determine that the services shall not be at no cost to the Laboratory, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Laboratory Procurement Official, the Laboratory's representatives, or the Laboratory's agents or consultants may correct or reperform the services themselves by hiring another service provider to perform similar services and charge to the Contractor the cost occasioned to the Laboratory thereby, or make a fair and equitable adjustment in the contract price.

(d) If the Laboratory does not require correction or reperformance, the Laboratory Procurement Official shall make an equitable adjustment in the contract price.

46. WARRANTY OF SUPPLIES (DEC 2011)

The Contractor warrants that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

When the contract requires the specification or delivery of energy consuming products for use in Federal facility, the contract or will specify or deliver EnergyStar® qualified products or products manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

47. BUY AMERICAN ACT – SUPPLIES (MAY 2014)

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item” means—

(1) Any item of supply (including construction material) that is

(i) A commercial item as defined in paragraph (b) of the definition at FAR 2.101;

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace;

(b) Does not include bulk cargo, as defined in 45 U.S.C. 40102(b), as such agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free end product) and any applicable tax on the component will be allowable.

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States;

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“Foreign end product” means an end product other than a domestic end product.

48. STATE AND LOCAL TAXES (DEC 2000)

(a) The Contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or imposed by any State or local jurisdiction on the Contractor with respect to the acquisition, transportation, handling, storage, condition, disposition, or use of any component, commodity, or service for which the Contractor is responsible under the terms of this contract.

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Representations and Certifications for the solicitation entitled “Buy American Certificate.”
(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be reimbursed to the Government; and
(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed to the Government; and
(iv) Only the cost of items therein not otherwise identified which, if the contract had been completed, would be required to be reimbursed to the Government.

(7) Complete performance of the work not terminated.

(8) Taking action that may be necessary, or that the Laboratory Procurement Official may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Laboratory Procurement Official, all property of the kinds referred to in paragraph (c)(3) of this clause, provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Laboratory Procurement Official. If the Contractor shall not be able to sell or otherwise dispose of any property by 120 days after the date of termination, the Laboratory Procurement Official may determine, upon request of the Contractor, the amount to be paid because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(10) The Contractor shall keep and maintain records and books of account which show accurately, in a form and manner prescribed by the Laboratory Procurement Official, all costs incurred by the Contractor under this contract, and the extent to which payments have been made to the Contractor in respect thereof, or of any item or process (including computer software) made or furnished by the Contractor under this contract.

(11) All unliquidated advance or other payments to the Contractor, under the terminated portion of the contract, if the Laboratory Procurement Official believes the total of these payments exceeded the amounts finally determined to be due to the Contractor (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Laboratory Procurement Official.

50. RESTRICTION ON CERTAIN FOREIGN PURCHASES (JUN 2008)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the Contractor under this contract or under any follow-on production contract.

(b) Except as authorized by OFAC, this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the Contractor may be reimbursed for sales to a purchaser for the sale of the commercial item(s).

(c) If the Contractor agrees to any transfer or disposition of property or proceeds of any transfer or disposition of property, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Laboratory Procurement Official. The proceeds of any transfer or disposition of property that is of the types referred to in paragraph (c)(6) of this clause; or (ii) meets any of the conditions, if any, due to the Contractor because of the termination and shall pay the amount determined.

51. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) – APPLICABLE TO CONTRACTS WHICH EXCEED $100,000

(a) The contractor shall be paid in full with respect to the allowable costs set forth in the “Consideration and Allowable Costs” clause.

(b) Payment will be made under this contract or any subcontractor or contractor for the sale of the commercial item(s).

(c) If the Contractor fails to perform the requirements of this clause, the Contractor shall repay the excess to the Laboratory upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date of the excess payment to the date the excess payment is returned to the Contractor. Interest shall not be charged on any excess payment due to a reduction in the Contractor’s termination settlement proposal because of retention or other disposition of termination inventory.

(d) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

52. PAYMENTS (FEB 2004)

(a) The contractor shall be paid in full with respect to the allowable costs set forth in the “Consideration and Allowable Costs” clause.

(b) Payment will be made under this contract or any subcontractor or contractor for the sale of the commercial item(s).

(c) If the Contractor fails to perform the requirements of this clause, the Contractor shall repay the excess to the Laboratory upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date of the excess payment to the date the excess payment is returned to the Contractor. Interest shall not be charged on any excess payment due to a reduction in the Contractor’s termination settlement proposal because of retention or other disposition of termination inventory.

(d) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.
53. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

This clause applies to all subcontracts that exceed $150,000.

(a) Definitions. As used in this clause:

(1) *Agency* means *executive agency* as defined in Federal Acquisition Regulation (FAR) 2.101.

(2) *Covered Federal action* means any of the following actions:

(A) Awarding any Federal contract.

(B) Making any Federal grant.

(C) Making any Federal loan.

(D) Entering into any cooperative agreement.

(E) Extending, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

(3) *Indian tribe* and *Indian organization* have the meanings provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450d) and include Alaskan Natives.

(4) An individual who is a member of a Federal advisory committee, as defined by the Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(5) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State or the District of Columbia, governmental entity, including a county, a public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(6) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(I) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(II) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(III) A Special Government employee, as defined in section 202, Title 18, United States Code.

(7) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix, as the phrase is defined in the Federal Advisory Committee Act.

(8) *Person* includes an individual, corporation, partnership, association, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term also includes any Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes described in paragraph (b) of this clause and are permitted by other Federal law.

(9) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any agency, a normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(10) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) *Recipient* includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes described in paragraph (b) of this clause and are permitted by other Federal law.

(12) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee of such person is regularly employed if such person is regularly employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for regularly employed as soon as he or she is employed by such person for 130 working days.

(13) *State* means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement, when using appropriated funds to pay for any influencing activities, from attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or a Member of Congress in connection with any covered Federal action.

In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay for any influencing activities, from attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or a Member of Congress in connection with any covered Federal action.

(1) The term appropriated funds does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, the Contractor may be exempt from the requirements of paragraph (b) of this section.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.

54. BANKRUPTCY (JUL 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Laboratory Procurement Official responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a list of any other creditors specifically cited and to be excepted from this clause.

(c) As part of the notification, the contractor shall provide the Authorized Laboratory Procurement Official a revised estimate of the total cost of performing this contract.

(d) If the contractor agrees to use the revised estimate of the total contract cost specified in subparagraph (c) above, the contractor may also specifically cite and be stated to be an exception to this clause.

55. LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Laboratory more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the estimated cost specified in the Schedule.

(b) The contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, is specified in the Schedule and equals the balance of the Laboratory funds for the benefit of this contract.

(c) The contractor shall notify the Authorized Laboratory Procurement Official in writing whenever it has reason to believe the cost will exceed the estimated cost.

(d) The contractor will not be entitled to use the excess cost as a credit on future contracts.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Authorized Laboratory Procurement Official, shall affect this contract’s estimated cost to the Laboratory. In the absence of the notice, the contractor shall perform this contract, and the contractor will be charged for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Laboratory. In the event the contract is changed to a cost-sharing contract, those excess costs incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the contractor incurs beyond that increase that are not specifically cited and be stated to be an exception to this clause.

(g) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation of a proposal or bid, proposal or application for a Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(h) If the estimated cost specified in the Schedule is increased, any costs the contractor incurs beyond that increase that are not specifically cited and be stated to be an exception to this clause.

(i) Changes shall not be considered an authorization to exceed the estimated cost to the Laboratory specified in the Schedule, unless they contain a statement increasing the estimated cost.
56. LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Laboratory more than (1) the estimated cost specified in the Schedule, or (2) a cost-sharing contract, the amount allowed by the Laborator

(b) The Schedule specifies the amount presently available for payment by the Laborator

(c) The parties estimate that performance of this contract will not cost the Laboratory more than (1) the estimated cost specified in the Schedule or (2) a cost-sharing contract, the amount allowed by the Laborator

(d) The contractor shall notify the Authorizaed Laboratory Procurement Official in writing whenever this

57. ANTI-KICKBACK PROCEDURES (MAY 2014)

(a) Definitions. "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or maintaining favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime Contractor" as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract or in connection with a subcontract relating to a prime contract.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontractor," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) Kickbacks. (1) Providing or attempting to provide or accepting or attempting to accept any kickback; or

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) The contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(d) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The contracting officer may (i) offset the amount of kickback withheld under subdivision (c)(i) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(ii) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(e) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(ii) but excluding paragraph (c)(i), in all subcontracts under this contract which exceed $150,000.

58. CONSEQUENTIAL AND ALLOWABLE COSTS (AUG 2001)

In full and complete monetary consideration for the performance of work under this contract, the Laboratory shall pay the contractor for the following items of allowable costs:

(a) Labor. For time worked in the performance of this contract by contractor personnel (excluding travel time) at the authorized loaded hourly rates specified for the pertinent labor classifications. The authorized loaded hourly rates shall include wages, overtime, personal and unavoidable expenses, and profit (as provided); provided, however, that the loaded hourly wages shall not be varied by virtue of the contractor having performed work on an overtime basis. Said loaded hourly rates shall not exceed the rates prevailing in the general labor market in the contractor's geographical area, and shall be paid on a time-and-materials basis, unless otherwise specified as reimbursable at another rate.

(b) Materials, Supplies, Computer Time. The actual cost direct to the contractor for materials, supplies, and computer time necessary for the performance of the work under this contract, provided the contractor has at all times during the performance of the work under this contract maintained accurate records of all costs to which allowance is to be made, including records of all quantities and values, and paid invoices or other documentation of the nature of such costs, and that the contractor is entitled to be reimbursed for such costs. If the contractor does not maintain accurate records of such costs, the contractor shall be reimbursed for such costs without profit, using the formula specified in the Schedule.

(c) Subcontracts and Consultants. The actual direct cost to the contractor of such subcontractor or consultant services as are expressly approved in writing by the authorized Laboratory Procurement official.

(d) Other. Sums sufficient to reimburse the contractor for such other direct costs as the laboratory may determine to be allowable on an official business basis. It is understood that travel time is not compensable (see Paragraph (a) Labor above) and travel expenses are reimbursable in accordance with the following rules:

(1) Travel related to contractor personnel for performance of services at a location away from the contractor's base must be approved by the appropriate Laboratory Division Director or his/her designee. In no event shall such travel be reimbursed unless it has been approved by the Laboratory. In addition, any foreign travel charged directly shall be subject to the prior approval of the Laboratory and shall be supported by adequate documentation of its cost contained in an approved budget. Foreign travel is defined as any travel outside the United States and its territories and possessions, Puerto Rico and Northern Mariana. Requests for foreign travel must be submitted in accordance with DOE procedures prior to the planned departure date, be on a Request for Approval of Foreign Travel form (DOE F 331.1), and when applicable, include a notification and other requirements respecting the proposed sensitive foreign nations travel.

Transportation facilities available to the contractor only outside the United States, the District of Columbia, the Commonwealth of Puerto Rico and possessions of the United States should be on a U.S.-flag air carrier to the extent that service by these carriers is available. In circumstances where it is not, a "Statement of Unavailability of U.S.-Flag Carriers" shall be included on vouchers indicating that a U.S.-flag air carrier was not considered or that the specific circumstances should be given as to why it was necessary to use foreign air carrier service.

(2) As full reimbursement for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in connection with the performance of services away from the contractor's base and travel authorized in accordance with paragraph 1, above, the contractor shall be entitled to be reimbursed for actual costs. Allowable travel costs will be determined in accordance with Federal Acquisition Regulation (FAR) 31.205-46 Travel Costs in effect as of the date of this agreement, however, the foregoing notwithstanding each expenditure of $25 or more must be supported by a receipt. Contractors will only be reimbursed for a travel expenditure over $25.00 that is supported by a receipt.

Subcontracts and Consultants. The actual direct cost to the contractor of such subcontractor or consultant services as are expressly approved in writing by the authorized Laboratory Procurement official.

(e) Other. Sums sufficient to reimburse the contractor for such other direct costs as the laboratory may determine to be allowable on an official business basis. It is understood that travel time is not compensable (see Paragraph (a) Labor above) and travel expenses are reimbursable in accordance with the following rules:

(1) Travel related to contractor personnel for performance of services at a location away from the contractor's base must be approved by the appropriate Laboratory Division Director or his/her designee. In no event shall such travel be reimbursed unless it has been approved by the Laboratory. In addition, any foreign travel charged directly shall be subject to the prior approval of the Laboratory and shall be supported by adequate documentation of its cost contained in an approved budget. Foreign travel is defined as any travel outside the United States and its territories and possessions, Puerto Rico and Northern Mariana. Requests for foreign travel must be submitted in accordance with DOE procedures prior to the planned departure date, be on a Request for Approval of Foreign Travel form (DOE F 331.1), and when applicable, include a notification and other requirements respecting the proposed sensitive foreign nations travel.

Transportation facilities available to the contractor only outside the United States, the District of Columbia, the Commonwealth of Puerto Rico and possessions of the United States should be on a U.S.-flag air carrier to the extent that service by these carriers is available. In circumstances where it is not, a "Statement of Unavailability of U.S.-Flag Carriers" shall be included on vouchers indicating that a U.S.-flag air carrier was not considered or that the specific circumstances should be given as to why it was necessary to use foreign air carrier service.

(2) As full reimbursement for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in connection with the performance of services away from the contractor's base and travel authorized in accordance with paragraph 1, above, the contractor shall be entitled to be reimbursed for actual costs. Allowable travel costs will be determined in accordance with Federal Acquisition Regulation (FAR) 31.205-46 Travel Costs in effect as of the date of this agreement, however, the foregoing notwithstanding each expenditure of $25 or more must be supported by a receipt. Contractors will only be reimbursed for a travel expenditure over $25.00 that is supported by a receipt.

Subcontracts and Consultants. The actual direct cost to the contractor of such subcontractor or consultant services as are expressly approved in writing by the authorized Laboratory Procurement official.

(e) Other. Sums sufficient to reimburse the contractor for such other direct costs as the laboratory may determine to be allowable on an official business basis. It is understood that travel time is not compensable (see Paragraph (a) Labor above) and travel expenses are reimbursable in accordance with the following rules:

(1) Travel related to contractor personnel for performance of services at a location away from the contractor's base must be approved by the appropriate Laboratory Division Director or his/her designee. In no event shall such travel be reimbursed unless it has been approved by the Laboratory. In addition, any foreign travel charged directly shall be subject to the prior approval of the Laboratory and shall be supported by adequate documentation of its cost contained in an approved budget. Foreign travel is defined as any travel outside the United States and its territories and possessions, Puerto Rico and Northern Mariana. Requests for foreign travel must be submitted in accordance with DOE procedures prior to the planned departure date, be on a Request for Approval of Foreign Travel form (DOE F 331.1), and when applicable, include a notification and other requirements respecting the proposed sensitive foreign nations travel.

Transportation facilities available to the contractor only outside the United States, the District of Columbia, the Commonwealth of Puerto Rico and possessions of the United States should be on a U.S.-flag air carrier to the extent that service by these carriers is available. In circumstances where it is not, a "Statement of Unavailability of U.S.-Flag Carriers" shall be included on vouchers indicating that a U.S.-flag air carrier was not considered or that the specific circumstances should be given as to why it was necessary to use foreign air carrier service.

(2) As full reimbursement for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in connection with the performance of services away from the contractor's base and travel authorized in accordance with paragraph 1, above, the contractor shall be entitled to be reimbursed for actual costs. Allowable travel costs will be determined in accordance with Federal Acquisition Regulation (FAR) 31.205-46 Travel Costs in effect as of the date of this agreement, however, the foregoing notwithstanding each expenditure of $25 or more must be supported by a receipt. Contractors will only be reimbursed for a travel expenditure over $25.00 that is supported by a receipt.

Subcontracts and Consultants. The actual direct cost to the contractor of such subcontractor or consultant services as are expressly approved in writing by the authorized Laboratory Procurement official.
59. PROHIBITION OF SEgregated FACILITIES (FEB 1999)

(a) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and washrooms, rest rooms, locker rooms, restrooms, and other storage or dressing areas, lunchrooms, drinking fountains, recreation or entertainment areas, transportation and household facilities, meeting rooms, and other similar areas or facilities in which the designated sexes are separated by physical barriers, design, or other implementation of sex-segregation rules or policies which are or are in fact segregated on the basis of sex, race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or separate or single-user dressing areas provided to assess privacy between the sexes.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The contractor agrees that this clause is a violation of the Equal Opportunity clause in this contract.

c. The contractor shall include a clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

60. ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2006)

(a) Laboratory-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor under this contract shall be owned by the Laboratory, and shall be delivered to the Laboratory or otherwise disposed of by the contractor under the terms of this clause as the Laboratory may from time to time direct during the progress of the work or, in any event, as the Laboratory Procurement Representative shall direct upon completion or termination of the contract.

(b) Contractor-owned records. Any record created under the contractor's control before the date of execution of this contract by the contractor or its employees, contractors, subcontractors, or suppliers, shall be subject to inspection, copying, and audit by the Laboratory Procurement Representative. The contractor shall not dispose of any record under circumstances similar to those in paragraphs (a) through (g) of paragraph (b) of this clause in all subcontractors (including fixed-price or unit-price subcontractors or purchase orders) of any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

c. The contractor shall maintain all records and similar files created in the commercial marketplace, and any records, information, or other data evidencing costs allowable, collections accruing to the subcontractor in connection with any of the applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor as the Contracting Officer shall direct upon completion or termination of the contract.

(d) Disposition of records. As agreed to in accordance with paragraph (e) of this clause, the contractor shall direct upon completion or termination of this contract and final audit of accounts hereunder, execution of such other agreements, including provisions of Clause 970.52-23-4, Access to and Ownership of Records, all other records in the possession of the contractor relating to this contract shall be preserved by the Contractor for a period of three years after the date hereof, unless required by contract, or as may be agreed to by the Government and the Contractor.

(e) Reports. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

(f) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall require each proposed subcontractor whose subcontract will exceed the simplified acquisition threshold, to insert or have inserted the substance of this clause, including this paragraph (f) of this clause, in each subcontract that —

(1) The name of the subcontractor.

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to comply with the provisions of this clause would result in the initiation of such actions by the DOE, its subcontractors, or any person, including the contractor, in violation of Executive Order 13027, as modified for the identification of the parties, in each subcontract that —

(a) Is a commercial item (as defined in paragraph 10 of the definition in FAR 2.101); or

(b) Is a subcontract or purchase order at any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.


(g) Subcontracts. The Contractor shall require each proposed subcontractor whose subcontract will exceed the simplified acquisition threshold, to insert or have inserted the substance of this clause, including this paragraph (g) of this clause, in each subcontract that —

(a) Is a commercial item (as defined in paragraph 10 of the definition in FAR 2.101); or

(b) Is a subcontract or purchase order at any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Contractors. The contractor shall inspect such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time request.

(i) Inspections. The DOE shall have the right to conduct an audit of the subcontractor's costs or arrange for such an audit to be conducted by the cognizant government audit agency through the Contracting Officer.

(j) The contractor shall maintain all records and similar files created in the commercial marketplace, and any records, information, or other data evidencing costs allowable, collections accruing to the subcontractor in connection with any of the applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Laboratory Procurement Representative shall direct upon completion or termination of this contract and final audit of accounts hereunder, execution of such other agreements, including provisions of Clause 970.52-23-4, Access to and Ownership of Records, all other records in the possession of the contractor relating to this contract shall be preserved by the Contractor for a period of three years after the date hereof, unless required by contract, or as may be agreed to by the Government and the Contractor.

(f) Subcontracts. The Contractor shall require each proposed subcontractor whose subcontract will exceed the simplified acquisition threshold, to insert or have inserted the substance of this clause, including this paragraph (f) of this clause, in each subcontract that —

(a) Is a commercial item (as defined in paragraph 10 of the definition in FAR 2.101); or

(b) Is a subcontract or purchase order at any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(f) Subcontracts. The Contractor shall require each proposed subcontractor whose subcontract will exceed the simplified acquisition threshold, to insert or have inserted the substance of this clause, including this paragraph (f) of this clause, in each subcontract that —

(a) Is a commercial item (as defined in paragraph 10 of the definition in FAR 2.101); or

(b) Is a subcontract or purchase order at any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(f) Subcontracts. The Contractor shall require each proposed subcontractor whose subcontract will exceed the simplified acquisition threshold, to insert or have inserted the substance of this clause, including this paragraph (f) of this clause, in each subcontract that —

(a) Is a commercial item (as defined in paragraph 10 of the definition in FAR 2.101); or

(b) Is a subcontract or purchase order at any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(f) Subcontracts. The Contractor shall require each proposed subcontractor whose subcontract will exceed the simplified acquisition threshold, to insert or have inserted the substance of this clause, including this paragraph (f) of this clause, in each subcontract that —

(a) Is a commercial item (as defined in paragraph 10 of the definition in FAR 2.101); or

(b) Is a subcontract or purchase order at any tier entered into hereunder. Under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his personal property as security for the performance of an obligation. The purpose of such a pledge is to compel the debtor to remain in the service of another, whether it takes place in the United States or abroad. Technical information (data) provided to or re-exported. This includes deemed exports which are any communication of technical data to a foreign entity, whether it takes place in the United States or abroad. The contractor must, upon request by the Government, provide a written report on any effort to re-export technical data. The report must include the following information:

1. The reason for the request for re-export.
2. The technical data to be re-exported.
3. The country to which the technical data will be re-exported.

68. Export Control

(a) The contractor must comply with the requirements of the U.S. export control statutes and regulations. Unless authorized by appropriate government license or authorization, the contractor must not export, re-export, or transfer technical data to a foreign entity, whether it takes place in the United States or abroad. The contractor must also notify the Government in writing of any effort to re-export technical data. The report must include the following information:

1. The reason for the request for re-export.
2. The technical data to be re-exported.
3. The country to which the technical data will be re-exported.

(b) The contractor must notify the Government in writing of any effort to transfer technical data to a foreign entity, whether it takes place in the United States or abroad. The report must include the following information:

1. The reason for the request to transfer technical data.
2. The technical data to be transferred.
3. The foreign entity to which the technical data will be transferred.

69. Laboratory Site Access and/or Participation in Activities by Non-U.S. Nationals (DEC 2004)

(a) Site Access

Site access, including access to laboratory facilities, must be limited to U.S. citizens and non-U.S. citizens who meet the criteria established by the appropriate government authority. Site access may be granted to non-U.S. citizens only for research purposes and only under the following conditions:

1. The individual must be a citizen of a country that is not subject to a specific denial order or a country that is included on the U.S. government’s list of countries with a high threat of terrorism.
2. The individual must be a member of an organization that is authorized to conduct research at a U.S. laboratory.
3. The individual must be able to demonstrate a need for access to U.S. laboratory facilities.

(b) Participation in Activities

Participation in activities by non-U.S. nationals must be limited to activities that are consistent with the research objectives of the laboratory. Non-U.S. nationals may participate in activities only under the following conditions:

1. The individual must be a citizen of a country that is not subject to a specific denial order or a country that is included on the U.S. government’s list of countries with a high threat of terrorism.
2. The individual must be a member of an organization that is authorized to conduct research at a U.S. laboratory.
3. The individual must be able to demonstrate a need for participation in the activity.


The contractor understands that the materials and information being transmitted under the performance of this contract may contain sensitive or classified information. The contractor is aware of the U.S. government’s requirements regarding export of regulated data or materials. The contractor agrees to comply with all applicable U.S. export control regulations, including the Federal Export Administration Regulations and the International Traffic in Arms Regulations. The contractor is responsible for ensuring that all data and materials provided under this contract are delivered only to U.S. citizens or citizens of a U.S.-allied country. The contractor is also responsible for ensuring that all data and materials are exported in compliance with the applicable U.S. export control regulations.
regulation, contractor agrees not to export directly or indirectly any technology, software or materials provided by the Laboratory. Contractor shall be solely liable for any violation of export control statutes or regulations, and shall indemnify and hold the Department of Energy, UChicago Argonne, LLC, and the Laboratory harmless from any liability that may arise for any such violation.

69. EXPORT CONTROL INFORMATION FOR FOREIGN TRAVEL (NOV 2002)

The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nonproliferation objectives. Although much of the work Argonne and its employees undertake to further its research and technology development mission is exempted from U.S. export control regulations, the Laboratory must abide by all of the export control laws and regulations to ensure its compliance with export controls. An export can occur through a variety of means, including oral communications, written documentation, or transfer of U.S. computer software to foreign nationals. Technology transfers to foreign nationals while they are visiting the United States or other countries or while you are visiting their country are considered exports. You and the Laboratory can be held liable for improperly transferring controlled technologies.

Prior to transfer, verify that the technology, information, and/or commodities fall into one or more of the following categories:

- Fundamental research and information resulting from fundamental research
- Published information and software (publicly available) education information
- Patent applications
- If the information, technology, and/or commodities do not fall into one of these categories, please contact the Laboratory Procurement Official at Argonne to determine if a license is required prior to export. To further ensure that you do not run the risk of exporting sensitive information or technology when traveling abroad, keep the following guidelines in mind that without having acquired an export license prior to your travel:
  - All conversations and discussions must be limited only to topics that are not DOE Sensitive Subjects List and the Argonne Sensitive Technologies and not related to controlled items or technologies unless the site is in the public domain. Further elaboration, or additional details, may be considered an export of technologies and need an export license prior to release.

70. CONFLICTS OF DOCUMENTATION (AUG 2001)

Any discrepancy, inconsistency, or conflict in the SCHEDULE or in one or more of the documents identified in the article entitled “Applicable Documentation” which can be reasonably ascertained by the contractor shall be immediately submitted to the Laboratory for its written decision. Any work undertaken by the contractor without such decision shall be at the contractor’s own risk.

71. ENVIRONMENTAL PROTECTION (AUG 2001)

In performing this contract, the contractor shall comply with the requirements set forth in all applicable Federal and non-Federal environmental protection laws, codes, ordinances, Executive Orders, regulations, and directives.

72. LIMITATIONS PERIOD (AUG 2001)

Any action brought by the contractor for breach of contract, request for equitable adjustment, or any other claim arising under the contract must be identified in writing to the Laboratory Procurement Official. Such written notification must be received by the Laboratory Procurement Official within two (2) years (unless an earlier period is stated elsewhere in the contract) after the completion of work under the contract or after the cause of action has arisen, whichever occurs first, otherwise the contractor shall be barred from pursuing such action.

73. VEHICLE LIABILITY INSURANCE COVERAGE (AUG 2001)

In the event a Government or Laboratory vehicle (including Laboratory-rented vehicle) will be utilized by the contractor during the course of work under this contract, contractor agrees to obtain and maintain appropriate levels of automobile liability coverage for property damage and bodily injury and such insurance shall be primary.

74. ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

(a) Definitions. As used in this clause—

“Driving” means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe to do so.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) For company-owned or -rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

75. INTEGRATION CLAUSE (AUG 2001)

This contract represents the full understanding of the parties and is the entire agreement between the parties. All negotiations between the parties have been merged into the contract, and there are no understandings or agreements other than those incorporated into this contract.

76. TECHNICAL STANDARDS PROGRAM (FEB 2011)

This article applies if any Contractor personnel participate in development, review or selection activities related to DOE Technical Standards.

1. In the performance of this contract, the Contractor, when participating in the development of Department of Energy (DOE) Technical Standards, conducting technical standards review activities, and selecting technical standards for use to support assigned DOE missions and functions, must:

2. Select, use, and adhere to appropriate voluntary consensus standards (VCSs), except where use of VCSs is inconsistent with law or impractical. (Note: VCSs are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international.)

3. Participate as appropriate in development and review of those DOE Technical Standards where the contractor has technical or programmatic interests, or will be affected by the content of DOE Technical Standards under development, or as directed by the Contracting Officer.

4. Designate and provide support for a coordinator for technical standards activities, including identification of the appropriate Subject Matter Experts to review draft DOE Technical Standards.

5. Report participation in VCS activities conducted in support of DOE missions and functions through the Laboratory Technical Standards Manager in The Office of Contract Administration (OCA).

6. Flow down this requirement to subcontractor(s) at any tier to the extent necessary to ensure the contractor’s compliance with these requirements.

77. SUSPECT COUNTERFEIT PARTS (DEC 2007)

Notwithstanding any other provisions of this agreement, the contractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the Laboratory. Contractor further warrants that all items used by the contractor during the performance of work at the Argonne National Laboratory include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the contractor shall indemnify the Laboratory, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; values; pipe and fittings; electrical equipment and devices; pipes, bars, shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules. The contractor’s warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation may constitute criminal conduct, the Laboratory may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.
# SUSPECT/COUNTERFEIT PART

## HEADMARK LIST

**ALL GRADE 5 AND GRADE 8 FASTENERS OF FOREIGN ORIGIN WHICH DO NOT BEAR ANY MANUFACTURERS' HEADMARKS**

<table>
<thead>
<tr>
<th>Grade 5</th>
<th>Grade 8</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="Grade 5" /></td>
<td><img src="image" alt="Grade 8" /></td>
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**GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:**

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>J</td>
<td>Jinn Her (TW)</td>
</tr>
<tr>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
</tbody>
</table>

**GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:**

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Asahi Mfg. (JP)</td>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
<tr>
<td>NF</td>
<td>Nippon Fasteners (JP)</td>
<td>RT</td>
<td>Takai Ltd (JP)</td>
</tr>
<tr>
<td>H</td>
<td>Hinomoto Metal (JP)</td>
<td>FM</td>
<td>Fastener Co of Japan (JP)</td>
</tr>
<tr>
<td>M</td>
<td>Minamida Sieybo (JP)</td>
<td>KY</td>
<td>Kyoeli Mfg (JP)</td>
</tr>
<tr>
<td>MS</td>
<td>Minato Kogyo (JP)</td>
<td>J</td>
<td>Jinn Her (TW)</td>
</tr>
<tr>
<td>Hollow Triangle</td>
<td>Infasco (CA TW JP YU) (Greater than 1/2 inch dia)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>Daiei (JP)</td>
<td>UNY</td>
<td>Unyitle (JP)</td>
</tr>
</tbody>
</table>

**GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:**

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
</tbody>
</table>

**GRADE A325 FASTENERS (BENNETT DENVER TARGET ONLY) WITH THE FOLLOWING HEADMARKS:**

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type 1 A325 KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
<tr>
<td>Type 2 A325 KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
<tr>
<td>Type 3 A325 KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
</tbody>
</table>

Headmarkings are usually raised – sometimes indented.

**KEY:** CA-Canada, JP-Japan, TW-Taiwan, YU-Yugoslavia

**ANY BOLT ON THIS LIST SHOULD BE TREATED AS DEFECTIVE WITHOUT FURTHER TESTING.**

**OR, IF YOU SEE ANY INDICATION THAT A CIRCUIT BREAKER MAY BE USED OR REFURBISHED (SEE:** [http://www.saftek.com/worksafe/bull82.txt](http://www.saftek.com/worksafe/bull82.txt)