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) Definition. Eligible employee' means a current or former employee of a contractor or subcontractor employed by a Department of Energy Defense Nuclear Facility [1] whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has not been granted the right to annul this contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) is qualified for a particular job vacated by the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

[2] Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

(c) 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. 603 expected to exceed $50,000).

2. COVENANT AGAINST CONTINGENT FEES (MAY 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employment or agency agency which is authorized by law to represent the Contractor.

(b) The Contractor shall furnish to the contracting agency all information required by (a) the Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor. The Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities based on their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;
(ii) Hiring, upgrading, promotion, award of bonus, demotion, transfer, layoff, termination, recall, right of return from layoff, and rehiring;
(iii) Rates of pay or other form of compensation and changes in compensation;
(iv) Job assignments, workNVlocations, or work schedules;
(v) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence for pursuit of training;
(vi) Activity of the Contractor, including social or recreational programs; and
(vii) Any other term, condition, or privilege of employment.

(c) The Contractor agrees to comply with the rules, regulations, and other orders of the Secretary of Labor (Secretary) under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), and to act as specified by the Deputy Assistant Secretary to enforce the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

3. EQUAL OPPORTUNITY (APR 2015)

(a) Definitions. As used in this clause, "gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/owmc/ OFCCP/ CFR70.216b. "Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/owmc/ofccp/CFR70.216b. "Uniformed services" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, if the position is available to individuals of a particular religion to perform work connected with the carrying on of the business of the Contractor, if the position is available.

(c) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(d) The Contractor shall not discriminate against any employee or applicant for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but be limited to--

(i) Employment;
(ii) Upgrading;
(iii) Demotion;
(iv) Transfer;
(v) Recruitment or recruitment advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other form of compensation; and
(viii) Selection for training, including apprenticeship.

(e) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(f) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, if the position is available to employees and applicants for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(g) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notices in conspicuous places available to employees and applicants for employment.

(h) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(i) The Contractor shall include as a term in every subcontract or supplement thereto that provides for work to be performed under this contract, the provisions of this clause, as amended from time to time, as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any discriminatory action taken by the Contractor to employ and advance in employment qualified protected veterans.

(j) Subcontracts. The Contractor shall include the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

4. EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

(a) Definitions. As used in this clause--

(i) "Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualifying disabled veteran," and "recently separated veteran" have the meanings given at FAR 21.301.

(ii) "Equal opportunity clause" means any clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(iii) Subcontracts. The Contractor shall include terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

5. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)

This clause applies to all subcontracts with a value in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary.

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities based on their physical or mental disability in all employment practices such as--

(i) Recruitment, advertising, and job application procedures;
(ii) Hiring, upgrading, promotion, award of bonus, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(iii) Rates of pay or other form of compensation and changes in compensation;
(iv) Job assignments, workNVlocations, or work schedules;
(v) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence for pursuit of training;
(vi) Activity of the Contractor, including social or recreational programs; and
(vii) Any other term, condition, or privilege of employment.

(b) Postings.

(1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
(ii) The rights of applicants and employees.

(2) These notices shall be made available to employees and applicants for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Contractor shall include as a term in every subcontract or supplement thereto to which this clause applies, the provisions of this clause, as amended from time to time, as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any discriminatory action taken by the Contractor to employ and advance in employment qualified protected veterans.

(d) Subcontracts. The Contractor shall include terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

6. EMPLOYMENT REPORTS (FEB 2016)

(a) Definitions. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 21.301.

(b) Unless the Contractor is a Federal agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(i) The total number of non-veteran employees hired during the period covered by the report, and of the total, the number of protective veterans, the number of non-disabled wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans; and
(ii) The total number of new employees hired during the period covered by the report, and of the total, the number of protective veterans, the number of non-disabled wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans.

(c) The Contractor shall submit the reports described in paragraph (b) of this clause to the Department of Labor, Equal Employment Opportunity Commission, by September 30 of each year.
(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:
(1) As of the end of any pay period between July 1 and August 31 of the year the report is due:
(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

The number of veterans reported must be based on data known to the contractor when completing ETS-4212; the contractor means the prime contractor or subcontractor. The person in charge of the Federal, State, or local government personnel, or the person in charge of any other enterprise, who is responsible for enforcing the laws of the United States, that are required to include the clause defined at 23.103.

A contractor is not considered to be directly performing work unless the contractor is performing work on the contract, or subcontracts.

(1) Normally performs support work, such as indirect or overhead functions; and
(2) Does not perform any substantial duties applicable to the contract.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

Contractor shall refer to the Federal government.

(1) United States’s, as defined in U.S. Code Title 40, Sections 4701-10 of the Statutes of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

7. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS - EXECUTIVE ORDER 13496: (APRIL 2010)

7.1. Executive Order 13496: Executive Order 13496 requirements conform to 29 CFR Part 471. For the full text, please visit the Federal Register or the Department of Labor’s website at http://www.dol.gov/olms/regs/compliance/EO13496.htm.

7.2. Required Text: The required text of the employee notice referred to in this clause is located at Appendix A, which includes all places where notices to employees are customarily posted both physically and electronically. Obtaining Copies of Notice of Employee Rights:
(i) Notice of Employee Rights Under Federal Labor Laws - 11x17-inch one-page format (PDF)
(ii) Notice of Employee Rights Under Federal Labor Laws - 11x5.5-inch two-page format (PDF)

8. NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

8.1. Contracts That Exceed $10,000 in Value:

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such a manner, and containing such content as described by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages spoken by employees, in accordance with 29 CFR 471.22(b) and (f).

(b) Physical posting of the employee notice shall be in conspicuous places and about the Contractor’s plants and offices so that the notice is prominent and readily seen by employees who are engaged by the Federal government in activities relating to the performance of the contract.

(c) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice to the employees about terms and conditions of employment on any Web site that is maintained by the Contractor and is customarily used by employees for employment-related purposes.

(d) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (c) of this clause, the Contractor shall, in accordance with the Department of Labor’s Web site that contains the full text of the poster. The link to the Department’s website, as referenced in 29 CFR 471.14, of this section, must read, “Important Notice about the Rights of Federal Employees to Organize and Collective with Their Employers.”

8.2. Required Employee Notice:

(a) OSHA: The required employee notice, printed by the Department of Labor, may be:

(b) The notice used as exact duplicate of the notice issued by thesort Department of Labor and published in the Federal Register at 75 FR 9405 (February 23, 2010), and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 4.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 471 and the Department of Justice Enforcement Orders provided in paragraph 5.

(c) Subcontracts:
(i) The subcontractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor; or
(ii) If the contractor or subcontractor is subject to the Executive Order 13496 and is within $10,000 of the United States in this section, so that such provisions will be binding on each subcontractor.

9. EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)

(a) Definitions: As used in this clause:
(i) Commercially available off-the-shelf (COTS) item—

(ii) Buyer—(a) A commercial item (as defined in paragraph (1) of the definition at 2.101 (a)), for example, including a commercial item is a tangible item that is normally purchased and resold by a dealer in the private sector, or provided to governmental agencies and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified material (including (B) Use of government furnished equipment and services.

(iii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(iv) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(v) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(vi) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(vii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(viii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(ix) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(x) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xi) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xiii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xiv) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xv) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xvi) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xvii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xviii) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xix) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(xx) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall:

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due:
(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) Subcontracts:
(i) The subcontractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor; or
(ii) If the contractor or subcontractor is subject to the Executive Order 13496 and is within $10,000 of the United States in this section, so that such provisions will be binding on each subcontractor.

(h) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(i) If the Contractor becomes the subject of an investigation in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

10. INFORMATION TECHNOLOGY ACQUISITIONS (MARCH 2009)

All information technology acquired under this Agreement shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at http://checklists.nist.gov.

11. SECURITY (OCT 2013) (DEVIATION)
(a) Authorization. The Contractor agrees to respect original classified and declassified information and documents, material and special nuclear material which are in the Contractor's possession in connection with the performance of work under this contract and to require each contractor employee with need for access to such classified and declassified information and documents, material and special nuclear material to sign access authorizations of personnel. The Contractor shall not permit any individual to have access to any classified information or special nuclear material unless they sign such access authorization. The Contractor shall not permit any individual to have access to any classified information or special nuclear material unless they sign such access authorization.

(b) Definition of Classified Information. The term "classified information" means information that is received or obtained by the Contractor from the Government and which is identified as classified or controlled by the Government. The Contractor shall comply with all applicable laws, regulations, and Executive Orders, including those applicable to information classified in accordance with section 3143 of title 10, United States Code.

(c) Definition of Special Nuclear Material. The term "special nuclear material" means:

1. all material artificially enriched by any of the foregoing, but does not include source material.

(d) Definition of Restricted Data. The term "Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Energy that the information is primarily for the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information.

(e) Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written employment announcement to applicants a reference to the provisions of this clause and the classification, if any, of the classified information to which access is required.

(f) Criminal liability. It is understood that disclosure of any classified information relating to the use, custody, or control thereof would constitute a crime under applicable laws, regulations, and Executive Orders, including those applicable to information classified in accordance with the National Industrial Security Program operated by the Department of Energy.

(g) Definitions.

(i) Counterintelligence-scope polygraph examination. A counterintelligence-scope polygraph examination is an examination which is conducted to determine whether an individual's background, work history, and personal and financial relationships pose a risk to the national security of the United States.

(ii) Counterintelligence evaluation. The term "counterintelligence evaluation" means an examination which is conducted to determine whether an individual's background, work history, and personal and financial relationships pose a risk to the national security of the United States.

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an individual for a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information.

(iv) Counterintelligence evaluation program regulations. The evaluation program regulations at 10 CFR 709, the announcement should also alert applicants who successfully complete a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(v) The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R through the end of the calendar year.

(vi) Evaluation Program regulations. The Contractor shall comply with the provisions of the Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(vii) In the performance of work under this contract, the Contractor shall comply with all applicable laws, regulations, and Executive Orders, including those applicable to information classified in accordance with the National Industrial Security Program operated by the Department of Energy.

(viii) The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R through the end of the calendar year.

(ix) Counterintelligence-scope polygraph examination. A counterintelligence-scope polygraph examination is an examination which is conducted to determine whether an individual's background, work history, and personal and financial relationships pose a risk to the national security of the United States.

(x) Counterintelligence evaluation. The term "counterintelligence evaluation" means an examination which is conducted to determine whether an individual's background, work history, and personal and financial relationships pose a risk to the national security of the United States.

(xi) In collecting and using this information to make a determination as to whether it is appropriate to select an individual for a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information.

(xii) Counterintelligence evaluation program regulations. The evaluation program regulations at 10 CFR 709, the announcement should also alert applicants who successfully complete a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(xiii) The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R through the end of the calendar year.

(xiv) Evaluation Program regulations. The Contractor shall comply with the provisions of the Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(xv) In the performance of work under this contract, the Contractor shall comply with all applicable laws, regulations, and Executive Orders, including those applicable to information classified in accordance with the National Industrial Security Program operated by the Department of Energy.
15. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007)  
(a) Definition. As used in this clause—
(1) "Energy-efficient product"—

(i) Means a product that—

(I) Meets the Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) The "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions.

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

(1) Delivered by the Contractor to the Federal Government;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, operation, maintenance, or modification.

(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;

(2) Otherwise approved in writing by the Contracting Officer.

Information about these products is available for—

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

(2) FEMP at http://www.energystar.gov/products-

[To be filled in by Laboratory Procurement Representative]

17. PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003)  
(a) Definitions. As used in this clause—

(i) "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.

(ii) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Unless otherwise specified in the contract, the Contractor shall—

(1) Acquire for use in performing work under this contract, use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property,

(2) Furnish for the account of the Government; or

(3) Furnished by the Contractor for use by the Government; or

(c) If available, the contractor, in performing work under this contract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property,

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

(1) Be submitted in writing;

(2) Be submitted in Form (F) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(3) Cite the contract number on which the prior notice was submitted and the notice requirement in paragraph (a) of this clause. Any such requests shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed as indicated in paragraph (b) of this clause; and

(3) Be submitted in writing to the Contracting Office to which it was submitted.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase order under this contract that may involve international air transportation.

18. PREFERENCE FOR PRIVATELY OWNED U.S. – FLAG COMMERCIAL VESSELS (FEB 2006)  
(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) 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, and commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished only when the services are transported by privately owned vessels.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage of equipment, materials, and commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) that is no longer exempt, as—

(1) Acquired for a U.S. Government agency account;

(2) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(3) Furnished with the use of revenue from sales or leases of federal property.

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

(i) The Contracting Officer, and

(ii) The Office of Cargo Preference

(d) The Contractor shall furnish these bills of lading copies—

(1) Within 20 working days of the date of loading for shipments originating in the United States;

(2) Within 30 working days of the date of loading for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. government agency.

(B) Name of vessel.

(C) Vessel flag of registry.

(D) Date of loading.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

(H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(j) The Contractor shall submit the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(d).

(k) The requirements in paragraph (a) do not apply to—

(1) Cargos carried in vessels or as required or authorized by law or treaty.

(2) Ocean transportation between foreign or contiguous airports. Supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).

(3) Shipment of classified supplies when the classification prohibits the use of non-U.S.-flag air transportation.

(l) Subcontracts or purchase orders for the acquisition of commercial items unless—

(i) The contract is—

(A) A采购 agreement or ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is required or directed by the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontractor for items for L.O.3, destination shipment); or

(B) Shipped in direct support of U.S. military.

19. APPLICABLE LAW (OCT 1999)  
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.

Definitions: As used in this clause:

(a) "American Indian and Alaska Native" means any individual, tribe, band, group, or community, including a corporation, association, or other organization, any one member of which, or which, constitutes an American Indian or an Alaska Native, as defined in the Manual for Uniform System of Accounting for Federal Awards (41 U.S.C. 237). This definition also includes economic enterprises that meet the requirements of 25 U.S.C. 1452(c).

(b) "American Indian" means any individual who, or whose ancestors, were members of any tribe within the territory of the United States at the time of filing of the United States Declaration of Independence.

(c) "American Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native communities.

(d) "American Indian tribe's written designation" means a written designation provided by an Indian tribe that designates an ANC to count towards the tribe's subcontracting goals. This designation must be provided to the Contracting Officer within 30 days of the subcontract award.

(e) "ANC" or "Alaskan Native Corporation" means a corporation or association, any one member of which, or which, constitutes a band, group, tribe, or community, as defined in paragraph (b), that has been designated by an American Indian tribe to count towards the tribe's subcontracting goals.

(f) "Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native communities, as defined in paragraph (b).

(g) "Indian tribe's written designation" means a written designation provided by an Indian tribe that designates an ANC to count towards the tribe's subcontracting goals. This designation must be provided to the Contracting Officer within 30 days of the subcontract award.

(h) "Indian tribe subcontracting plan" means a subcontracting plan developed by a subcontractor or ANC designated by an American Indian tribe to count towards the tribe's subcontracting goals. This plan must be in writing and submitted to the Contracting Officer within the timeframe specified by the tribe.

(i) "Small disadvantaged business concerns" means small business concerns that are socially and economically disadvantaged. This includes small businesses owned and controlled by veterans of service in the Armed Forces who were disabled, and women-owned small business concerns. This definition also includes economic enterprises that meet the requirements of 13 CFR 203.101(c). The definition also includes economic enterprises that meet the requirements of 13 CFR 203.101(c).

(j) "Small disadvantaged business concerns" means small business concerns that are socially and economically disadvantaged. This includes small businesses owned and controlled by veterans of service in the Armed Forces who were disabled, and women-owned small business concerns. This definition also includes economic enterprises that meet the requirements of 13 CFR 203.101(c). The definition also includes economic enterprises that meet the requirements of 13 CFR 203.101(c).

(k) "Small disadvantaged business concerns" means small business concerns that are socially and economically disadvantaged. This includes small businesses owned and controlled by veterans of service in the Armed Forces who were disabled, and women-owned small business concerns. This definition also includes economic enterprises that meet the requirements of 13 CFR 203.101(c). The definition also includes economic enterprises that meet the requirements of 13 CFR 203.101(c).
(4) 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 the SBA as required by paragraph (c) of this clause, except goals, may be incorporated by reference as a part of the subcontract document. The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

21. PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable prime contract. The Contractor shall ensure that once the subcontractor refers to the Prime Contract to obtain a proper invoice and all other required documentation from the small business subcontractor.

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

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

22. NOTICE TO THE LABORATORY OF LABOR 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 shall provide the Laboratory with a copy of the contract and a statement of the nature and extent of the labor dispute within 30 days of issuance of the Notice of Dispute. The contractor shall also inform the Laboratory of any changes in the status of the labor dispute.

23. REPORTS (OCT 1999)

(a) The contractor shall furnish immediate reports to the Laboratory from time to time as requested, in such form and number as may be required by the Laboratory, summarizing activities of the contractor under subcontracted or small business contracts, and to accept of a proper invoice and all other required documentation from the subcontractor.

(b) 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. 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 15.408, Table 15-2 (to include any information reasonably required to understand the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including all used in arriving at the dollar value of the subcontract, the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-3 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of 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 understand the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including all used in arriving at the dollar value of the subcontract, the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-3 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of 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 understand the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including all used in arriving at the dollar value of the subcontract, the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-3 applies.

(d) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of 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 understand the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including all used in arriving at the dollar value of the subcontract, the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-3 applies.

27. 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;

(b) Any of these price or cost data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data; or

(c) The contractor shall modify the contract 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 cost or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract cost or the actual cost to the Contractor was not modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(c) If the 'Contracting Officer 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 the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(2) The Contractor or subcontractor took no action to bring the character of the data to the attention of the Contracting Officer.

(3) The contract price based on an agreement total cost of the contract and there was no agreement of the cost of each item procured under the contract.

(d) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) Except as prohibited by subdivision (c)(2)(iv) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if:

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor’s knowledge and belief, the contractor is entitled to the offset in the amount requested.

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted in the form specified in the ‘Certificate of Current Cost or Pricing Data.’

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor agrees not to raise the following matters as a defense:

(1) Interest compounded daily, as required by 26 U.S.C. 6622.

(2) The Contractor and subcontractor were not jointly liable to the Government for the reduction in the contract price.

(3) The actual cost to the Contractor, if there was no subcontract, was less than the actual cost to the subcontractor.

(f) Any subcontractor subcontractor that was 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 subcontractor that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were noncurrent.

29. LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

This clause applies to contracts in excess of $100,000. Definitions. As used in this clause—

‘Added value’ means the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g. processing orders of parts or services, maintaining inventory, coordinating deliveries, performing quality assurance functions).

‘Exclusive pass-through charge’ means a proposal for an equitable adjustment that results in an increase to the effective price of work provided to a subcontractor under a subcontract.

‘Government’ means the United States, the District of Columbia, and any agency, department, or instrumentality of the United States, including the Federal Acquisition Regulation (FAR).

‘Government contractor’ means the contractor or subcontractor party to the contract.

This clause applies when the contract is subject to FAR 44.101, and the work to be performed is not Government contractor contract work.

The Contractor shall determine if pass-through charges exist.

(b) The Contractor shall determine if pass-through charges exist.

(c) The General, the Government, shall not pay pass-through charges.

30. CHANGES (JUNE 2007)

(a) The Government contractor shall have the right to examine and audit all the contractor’s records, including purchase orders, and changes and modifications to purchase orders.

(b) ‘Default’ includes failure to make progress in the work so as to endanger performance.

(c) ‘Defective work to be performed by the lower-tier subcontractor(s).’

(d) ‘Recovery of exclusive pass-through charges. If the Contractor determines that exclusive pass-through charges exist:

(1) The Government contractor shall have the right to examine and audit all the contractor’s records, including purchase orders, and changes and modifications to purchase orders.

(2) For applicable DoD fixed-price contracts as identified in 15.408(n)(2)(i)(B), the Government contractor shall be entitled to a price reduction for the amount of exclusive pass-through charges included in the contract price.

Access to records:

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the contractor’s records, including purchase orders, and changes and modifications to purchase orders.

(b) ‘Subcontract’ means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

(c) ‘Added value’ means that the Contractor performs subcontract management functions that the Contractor considers necessary to determine whether the Contractor proposed, billed, or claimed exclusive pass-through charges.

(d) Flowdown: The Contractor shall insert the substance of this clause, including this paragraph (f), in any subcontract or purchase order in which the amount of the work included in the subcontract or purchase order exceeds 15.408(b)(ii)(B), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

31. EXCUSABLE DELAYS (OCT 1999)

(a) For default of subcontractors at any tier, the contractor shall not be in default because of any excusable delay affecting the performance of the work to be performed by the lower-tier subcontractor(s). The Contractor shall not be excused from the performance of the work to be performed by the lower-tier subcontractor(s).

(b) The Contractor shall insert the substance of this clause, including this paragraph (f), in any subcontract or purchase order in which the amount of the work included in the subcontract or purchase order exceeds 15.408(b)(ii)(B), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

(c) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final notice under paragraph (b) of this clause.

(d) The Contractor shall insert the substance of this clause, including this paragraph (f), in any subcontract or purchase order in which the amount of the work included in the subcontract or purchase order exceeds 15.408(b)(ii)(B), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

(e) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final notice under paragraph (b) of this clause.

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32. INSPECTION (OCT 1999)

(a) 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 operations at any one plant or separate location at which any subcontractor's work is being performed; or
(3) A separate and complete major industrial operation connected with the performance of this contract.

(b) The contractor shall provide and maintain an inspection system acceptable to the Laboratory covering the material, manufacturing 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.

(c) The Laboratory has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance and, in any event before acceptance. The Laboratory may also inspect the plant or plants of the contractor or any subcontractor engaged in contract performance. The Laboratory shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Laboratory performs inspection or tests on the premises of the contractor or a subcontractor, the contractor shall furnish and shall require subcontractors to furnish all reasonably necessary facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Laboratory shall accept or reject services and materials at the place of deliver as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless otherwise accepted.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials, the Contractor shall submit a report to the Laboratory covering the labor hours incurred in the replacement of the contractor's or subcontractor's work or services that were found to be defective. The report shall include a description of the work replaced or corrected, a copy of the report or the contract in which the work was performed, a statement of the cost incurred in the replacement, and a description of any cost savings that were realized.

(g) If the Laboratory finds that the labor hours required for the work replacement exceeded those specified in the contract, the Contractor shall be liable for any additional labor hours that were incurred.

(h) Notwithstanding paragraphs (f) and (g) above, the Laboratory may at any time require the contractor to remedy by correction or replacement, without cost to the Laboratory, any failure by the contractor to meet the requirements of this contract.

(i) The Laboratory reserves the right to review the Contractor's purchasing system as set forth in paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

(j) The Laboratory may require the contractor to replace or correct any cost or service materials at time of delivery that meet failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the provisions of the contract, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude the portion of the rate attributable to profit.

(k) The contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(l) If the contractor fails to proceed with reasonable promptness to perform required replacement or correction, or if the replacement or correction performed within the ceiling price (or the ceiling price as increased by the Laboratory), the Laboratory may—
(1) By notice or other equivalent corrective action, charge to the contractor the any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
(2) Terminate this contract for default.

(m) Notwithstanding paragraphs (f) and (g) above, the Laboratory may at any time require the contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, willful misconduct on the part of the contractor's managerial personnel or (2) the conduct of one or more of the contractor's employees selected or retained by the contractor after any of the contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or inefficient.

(n) This clause applies in the same manner and to the same extent to corrected or replacement materials or services and services originally delivered under this contract.

(o) The contractor has no obligation or liability for the contract to replace or repair materials and services that at time of delivery do not meet contract requirements, except as provided in this clause.

(p) Unless otherwise specified in the contract, the contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

33. PERMITS OR LICENSES (OCT 1999)

Except as otherwise directed by the Laboratory, the contractor shall procure all necessary permits or licenses and at all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

34. SUBCONTRACTS (OCT 2010)

(a) Applies to Contracts Exceeding the Simplified Acquisition Threshold

(1) Definitions. As used in this clause—
"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).
"Contractor's subcontract" means the written consent for the Contractor to enter into a particular subcontract.
"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(2) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(3) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—
(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
(2) Is fixed-price and exceeds—
(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 6 percent of the total estimated cost of the contract.
(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(4) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Laboratory Procurement Official's written consent before placing the following subcontracts:

(e) (1) The Contractor shall notify the Laboratory Procurement Official reasonably in advance of placing any subcontract or modification thereof for which consent is required under subparagraph (b), (c), or (d) of this clause, including the following information:
(i) A description of the supplies or services to be subcontracted.
(ii) Identification of the type of subcontract to be used.
(iii) Proposed subcontract price.
(iv) The subcontractor's current financial condition, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
(v) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(f) (1) A negotiation memorandum reflecting—
(A) The principal elements of the subcontract price negotiations;
(B) The most cost effective considerations in establishing of initial or revised prices.
(C) Reason cost certified or pricing data were not or were not required.
(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price.
(E) The extent to which it was recognized in the negotiation that the subcontractor price was not acceptable, require it to reflect actual or cost current, the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated.
(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated.

(g) A statement of the explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-offs considered.

(h) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless shall notify the Laboratory Procurement Official reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract. The notification shall be made in accordance with FAR Subpart 4.5.

(i) 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;
(2) Of the allowability of any cost under this contract; or
(3) To relieve the Contractor of any responsibility for performing this contract.

(j) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-reimbursement-type basis (i.e., cost reimbursable and cost-reimbursement type subcontract shall not exceed the fee limitations in FAR 52.210-4(c)(4)(i)).

(k) The Contractor shall give the Laboratory Procurement Official immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(l) The subcontractor preserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 4.4.

(m) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

35. 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 part of this contract to the Government or its designee. The Laboratory may assign this contract to a successor operator of the Laboratory.

36. SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2016)

(a) Definitions. As used in this clause—
"Commodity item" has the meaning contained in Federal Acquisition Regulation 2.101.
"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 subcontractor or vendor to incorporate, all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work is performed under this contract.
37. PROPERTY (JAN 2013)

(a) Furnishing of Government property. The Laboratory reserves the right to furnish any property or services required for the performance of this contract.

(b) Title to property. Except as otherwise provided by the Laboratory Procurement Official, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed, is a direct item of cost under this contract, shall pass directly from the vendor to the Government.

(c) Identification. To the extent directed by the Laboratory Procurement Official, the Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless the contractor has been directed otherwise by the Laboratory Procurement Official:

(i) Upon completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(ii) Upon the completion of the property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property.

(iii) At the termination of this contract.

(iv) At the time during the course of the contract to add or delete personnel.

(d) Instrumentation and tools. Instrumentation and tools acquired under this contract shall become Government property unless such loss, destruction, or damage was caused by (i) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; (ii) Failure of the Contractor's managerial personnel to take all reasonable steps for the use and protection of Government property in accordance with paragraphs (e)(1) and (f)(1) of this clause; or (iii) The absence of safeguards adequate to safeguard such property in accordance with paragraph (e)(1) of this clause.

(e) Property management—management of high-risk property and classified materials.

(1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Laboratory Procurement Official, or in the absence of such directions, in accordance with sound business practice, to safeguard and protect Government property in the Contractor's possession or custody.

(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for management contained in the DOE Property Management Regulations (41 CFR Chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 109), and other applicable Regulations.

(f) Risk of loss of Government property.

(i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(B) Failure of the Contractor's managerial personnel to take all reasonable steps for the use and protection of Government property in accordance with paragraphs (e)(1) and (f)(1) of this clause.

(C) Failure of contractor managerial personnel to establish, administer, and maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation and disposition of Government property in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Laboratory Procurement Official informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for such loss, destruction or damage.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the performance of this contract, the Contractor shall take all reasonable steps to stop the destruction or damage, to prevent any loss of property or to recover the damaged property, and shall make an immediate report to the Laboratory Procurement Official as soon as possible in accordance with the written direction of the Laboratory Procurement Official. The Contractor shall take all action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining property management coverage of such property, including

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.
42. 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 contracts on a basis that ensures that unit prices are in proportion to the items' 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 base 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 to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraphs (b), in all subcontracts for the acquisition of bulk acquisitions at or below the simplified acquisition threshold in FAR Part 12; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 16; and services where supplies are not required; commercial items; and petroleum products.

43. 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 it accepts a service as having satisfied the requirements of this contract. The Laboratory Procurement Official shall give written notice of any defect or nonconformance 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 service;

(2) That the Contractor is not required to correct or reperform the service.

(b) If the Contractor is required to correct or reperform, it shall 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 may, by contract or otherwise, correct or reperform the service. The Laboratory Procurement Official shall ensure that the service is corrected or reperformed by a contractor, and that the service is of a quality and performance that meets the requirements of this contract. The Laboratory Procurement Official shall give written notice of any defect or nonconformance 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 service;

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

(c) If the Contractor fails to correct or reperform, provides evidence of its inability or unwillingness to correct or reperform, the Laboratory Procurement Official may, by contract or otherwise, correct or reperform the service. The Laboratory Procurement Official shall determine that the alternative contractors for like services and charge the Contractor the cost occasioned by the Laboratory thereby, or make an equitable adjustment in the contract price.

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

44. WARRANTY OF SUPPLIES (OCT 2015)

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

Energy Consuming Products—

(a) The contract requires the specification or delivery of energy consuming products for use in Federal facilities. The contractor will specify or deliver EnergyStar® qualified products or products containing Federal Energy Management Program’s (FEMP) ENERGY STAR Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for EnergyStar® at:

http://www.energystar.gov/products

Refrigeration Equipment and Air Conditioners—

(a) When the contract requires refrigeration equipment or air conditioning, the contractor shall comply with requirements 608 and 609 of the Clean Air Act (40 USC 7071p and 7071h).

(b) When the contract requires the specification or delivery of refrigeration equipment or air conditioning, the contractor shall comply with requirements 608 and 609 of the Clean Air Act (40 USC 7071p and 7071h).

(c) When the contract requires the specification or delivery of television, the clause at FAR 52.223-14, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) shall apply.

45. CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $15000 (MAY 2014)

Except as otherwise may be approved, in writing, by the Laboratory Procurement Official, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract.

"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 representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor. Such representations shall be substantially the same as those required by other such reporting and stipulations being subject to all applicable rules and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

46. BUY AMERICAN ACT—SUPPLIES (MAY 2014)

(a) Definitions. As used in this clause—

1. (b) "Commercially available off-the-shelf (COTS) item"—

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

(1) A Commercial item (as defined in paragraph (2) of the definition at FAR 2.103);

(2) Sold in substantial quantities in the commercial marketplace;

(ii) 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; and

(3) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products, or any item of supply at or below the simplified acquisition threshold in FAR Part 12.

(2) 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. Costs of components does not include any costs associated with the manufacture of the end product.

(b) Components include—

(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.

(ii) Components of the end product are domestic.

(iii) The end product is a COTS item.

(c) Foreign end products—

(1) Do not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products, or any item of supply at or below the simplified acquisition threshold in FAR Part 12.

(2) Foreign end products include all items of supply at or below the simplified acquisition threshold in FAR Part 12, except for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 12; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 16; and services where supplies are not required; commercial items; and petroleum products.

(d) Commercially available off-the-shelf (COTS) item—

(1) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(e) Offersor may obtain from the Contracting Officer a list of foreign articles that the Contractor is required to avoid.

(f) 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 Certification.”

47. STATE AND LOCAL TAXES (DEC 2000)

The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(a) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(b) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(c) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(d) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(e) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).

(f) The contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied by any State or local government on sales or purchases of products, services, or supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component line of the Buy American statute is waived for an end product that is a COTS item (see 125(1)(3)).
Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification of the extent required by the Laboratory Procurement Official, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the costs of which would be reimbursable in whole or in part, from any one of this contract or under any follow-on production contract.

(6) If the Contractor fails to submit the proposal within the time allowed, the Laboratory Procurement Official because of the circumstances.

(7) Complete performance of the work not terminated.

(8) Take any 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, any property not referred to in paragraph (c)(6) of this clause if the Contractor, 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. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Contractor will accept the items and, if the Contractor does not enter into a storage agreement within 45 days from submission of the list, the Contractor may sell the items and deduct the proceeds from the amount due under this contract.

(i) The Contractor shall submit complete termination inventory schedules no later than 120 days after termination, or if the Contractor is not required to extend credit to any purchaser, 180 days after the effective date of termination. The Contractor shall prepare a list of all items to be stored, including a description of each item, its location, and the amount of storage required. The Contractor shall submit this list to the Laboratory Procurement Official within 45 days from the effective date of termination.

(ii) If the Contractor fails to submit the list within 45 days, the Laboratory Procurement Official may use its best efforts to arrange for the storage of the items. The Contractor shall be responsible for the cost of storage until the items are removed from storage. The Contractor shall promptly remove the items from storage and pay the costs of storage to the Laboratory Procurement Official. If the Contractor fails to remove the items within 120 days after the effective date of termination, the Laboratory Procurement Official may remove the items from storage and deduct the costs of storage from the amount due under this contract.

(iii) Subject to paragraph (f) of this clause, the Contractor and the Laboratory Procurement Official may agree that the entire amount is to be used to pay the costs of storage until the items are removed from storage. If the Contractor fails to remove the items within 180 days after the effective date of termination, the Laboratory Procurement Official may evaluate the costs of storage and deduct the costs from the amount due under this contract.

(i) The Contractor should have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(j) The Contractor shall have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(k) The Contractor shall have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(l) If the termination is partial, the Contractor may file with the Laboratory Procurement Official a proposal for an equitable adjustment of price(s) for the continued portion of the contract.

Laboratory Procurement Official shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment shall be requested by the Laboratory Procurement Official.

(m) If the contractor, however, that the Contractor 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 Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Contractor will accept the items and, if the Contractor does not enter into a storage agreement within 45 days from submission of the list, the Contractor may sell the items and deduct the proceeds from the amount due under this contract.

(i) The Contractor shall submit complete termination inventory schedules no later than 120 days after termination, or if the Contractor is not required to extend credit to any purchaser, 180 days after the effective date of termination. The Contractor shall prepare a list of all items to be stored, including a description of each item, its location, and the amount of storage required. The Contractor shall submit this list to the Laboratory Procurement Official within 45 days from the effective date of termination.

(ii) If the Contractor fails to submit the list within 45 days, the Laboratory Procurement Official may use its best efforts to arrange for the storage of the items. The Contractor shall be responsible for the cost of storage until the items are removed from storage. The Contractor shall promptly remove the items from storage and pay the costs of storage to the Laboratory Procurement Official. If the Contractor fails to remove the items within 120 days after the effective date of termination, the Laboratory Procurement Official may evaluate the costs of storage and deduct the costs from the amount due under this contract.

(iii) Subject to paragraph (f) of this clause, the Contractor and the Laboratory Procurement Official may agree that the entire amount is to be used to pay the costs of storage until the items are removed from storage. If the Contractor fails to remove the items within 180 days after the effective date of termination, the Laboratory Procurement Official may evaluate the costs of storage and deduct the costs from the amount due under this contract.

(i) The Contractor should have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(j) The Contractor shall have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(k) The Contractor shall have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(l) If the termination is partial, the Contractor may file with the Laboratory Procurement Official a proposal for an equitable adjustment of price(s) for the continued portion of the contract.

Laboratory Procurement Official shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment shall be requested by the Laboratory Procurement Official.

(m) If the contractor, however, that the Contractor 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 Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Contractor will accept the items and, if the Contractor does not enter into a storage agreement within 45 days from submission of the list, the Contractor may sell the items and deduct the proceeds from the amount due under this contract.

(i) The Contractor shall submit complete termination inventory schedules no later than 120 days after termination, or if the Contractor is not required to extend credit to any purchaser, 180 days after the effective date of termination. The Contractor shall prepare a list of all items to be stored, including a description of each item, its location, and the amount of storage required. The Contractor shall submit this list to the Laboratory Procurement Official within 45 days from the effective date of termination.

(ii) If the Contractor fails to submit the list within 45 days, the Laboratory Procurement Official may use its best efforts to arrange for the storage of the items. The Contractor shall be responsible for the cost of storage until the items are removed from storage. The Contractor shall promptly remove the items from storage and pay the costs of storage to the Laboratory Procurement Official. If the Contractor fails to remove the items within 120 days after the effective date of termination, the Laboratory Procurement Official may evaluate the costs of storage and deduct the costs from the amount due under this contract.

(iii) Subject to paragraph (f) of this clause, the Contractor and the Laboratory Procurement Official may agree that the entire amount is to be used to pay the costs of storage until the items are removed from storage. If the Contractor fails to remove the items within 180 days after the effective date of termination, the Laboratory Procurement Official may evaluate the costs of storage and deduct the costs from the amount due under this contract.

(i) The Contractor should have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(j) The Contractor shall have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(k) The Contractor shall have the right of appeal, from any determination made by the Laboratory Procurement Official under paragraph (f) of this clause, to the laboratory or to the final agency designated by the Laboratory Procurement Official.

(l) If the termination is partial, the Contractor may file with the Laboratory Procurement Official a proposal for an equitable adjustment of price(s) for the continued portion of the contract.
52. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

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

(a) Definitions. As used in this clause:

Agency—means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action—means any of the following actions:

(1) Awarding any Federal contract;

(2) Making any Federal grant;

(3) Making any Federal loan;

(4) Entering into any cooperative agreement;

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

Indian tribe, “tribal organization,” and “Indian society”—have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence—means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government—means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representing organizations, and any other instrumentality of a local government.

Officer or employee of an agency—includes the person or persons 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.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or employee for work that is not furnished to, not funded by, or not furnished in cooperation with a not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian society, State, and local government, regardless of whether such entity is operated for profit, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representing organizations, and any other instrumentality of a local government.

(c) Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

(i) Agency and legislative liaison by Contractor employees:

(1) The Contractor shall submit to the address identified below, for prepayment audit, conditions:

Agency mean “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

(1) Awarding any Federal contract;

(2) Making any Federal grant;

(3) Making any Federal loan;

(4) Entering into any cooperative agreement.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or employee for work that is not furnished to, not funded by, or not furnished in cooperation with a not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian society, State, and local government, regardless of whether such entity is operated for profit, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representing organizations, and any other instrumentality of a local government.

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

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

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

(4) 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 2.

(5) Personal or business contact with an individual, corporation, association, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representing organizations, and any other instrumentality of a local government.

(ii) Payments or services may be made to any person who, in such person’s official capacity or individually, represents an agency having governmental duties and powers.

(iii) A special Government employee, as defined in section 202, Title 18, United States Code, including a position under a temporary appointment.

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Submitting a proposal prior to its official submission.

(3) The total cost for the performance of this contract, exclusive of any fee, will be either

(1) The costs the contractor expects to incur under this contract in the next 60 days, when

(a) All subcontracts under this contract are not in effect;

(b) The contractor has sufficient monies, other than Federal appropriated funds, available for on-site audits.

(2) A copy of each subcontract disclosure form (but not certifications) shall be forwarded to OMB within 45 days of the submission of the subcontract which initiates the Federal action.

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

3. 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 appointed for administering the contract. This notification shall be filed with the initial filing of the bankruptcy petition. In the case of an involuntary bankruptcy, the notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, the identity of the bankruptcy petition, the names and addresses of all parties to the bankruptcy, and the name and address of the laboratory. The laboratory may require proof of the bankruptcy filing. The notification shall be filed within 5 days after the bankruptcy petition is filed. In the case of an involuntary bankruptcy, 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, the identity of the bankruptcy petition, the names and addresses of all parties to the bankruptcy, and the name and address of the laboratory. The laboratory may require proof of the bankruptcy filing. This notification shall be filed within 5 days after the bankruptcy petition is filed.

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 appointed for administering the contract. This notification shall be filed with the initial filing of the bankruptcy petition. In the case of an involuntary bankruptcy, the notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, the identity of the bankruptcy petition, the names and addresses of all parties to the bankruptcy, and the name and address of the laboratory. The laboratory may require proof of the bankruptcy filing. This notification shall be filed within 5 days after the bankruptcy petition is filed. In the case of an involuntary bankruptcy, 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, the identity of the bankruptcy petition, the names and addresses of all parties to the bankruptcy, and the name and address of the laboratory. The laboratory may require proof of the bankruptcy filing. This notification shall be filed within 5 days after the bankruptcy petition is filed.

5. 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 Laboratory’s share of the estimated cost specified in the Schedule. The contractor agrees to use its best efforts to work the performance specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, exceeds both the Laboratory and the contractor’s share of the estimated cost. The contractor shall notify the Laboratory Procurement Official in writing whenever it has reason to believe that the estimated cost will exceed the estimated cost specified in the Schedule.

(b) The contractor shall notify the Laboratory Procurement Official in writing whenever it has reason to believe that the estimated cost will exceed the estimated cost specified in the Schedule.

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

(d) The contractor shall notify the Laboratory Procurement Official in writing whenever it has reason to believe that the estimated cost will exceed the estimated cost specified in the Schedule.

(e) The contractor shall notify the Laboratory Procurement Official in writing whenever it has reason to believe that the estimated cost will exceed the estimated cost specified in the Schedule.

(f) The contractor shall notify the Laboratory Procurement Official in writing whenever it has reason to believe that the estimated cost will exceed the estimated cost specified in the Schedule.

(g) The contractor shall notify the Laboratory Procurement Official in writing whenever it has reason to believe that the estimated cost will exceed the estimated cost specified in the Schedule.
the estimated cost to the Laboratory specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is exceeded, any costs the contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Authorized Laboratory Procurement Official issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(g) Change orders 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.

(h) If this contract is terminated or the estimated cost is not increased, the Laboratory and the contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

55. 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) if this is a cost-sharing contract, the Laboratory's share of the estimated cost specified in the Schedule. The contractor shall 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, includes both the contractor's and the laboratory's share.

(b) The Schedule specifies the amount presently available for payment by the Laboratory and allocates the contractor's share of the cost. If this is a cost-sharing contract, the contractor shall, when the contractor's share of the cost of performance is reasonably estimated, notify the Authorized Laboratory Procurement Official in writing of the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(c) (1) If, at the time of the end of the period specified in the Schedule, the contractor has not requested additional funds incrementally to the contract for the full estimated cost to the Laboratory specified in the Schedule, unless they contain a statement increasing the amount of any fee. The contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Laboratory under the contract approximates but does not exceed the total amount actually allotted by the Laboratory to the contract.

(d) The contractor shall notify the Authorized Laboratory Procurement Official in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the contractor by the Laboratory or, (ii) if this is a cost-sharing contract, the amount then allotted to the contractor by the Laboratory plus the contractor's share of the cost. The notice shall include the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule, the contractor's share shall then become payable in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Authorized Laboratory Procurement Official may terminate this contract at any later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The contractor is not obligated to reimburse the contractor for costs incurred in excess of the total amount allotted by the Laboratory to this contract; and

(2) The contractor is not obligated to reimburse the contractor for this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of—

(i) The amount then allotted to the contractor by the Laboratory or;

(ii) If this is a cost-sharing contract, the amount then allotted to the contractor by the Laboratory plus the contractor's share of the cost.

(g) The contractor shall notify the Authorized Laboratory Procurement Official in writing when it has reason to believe that the cost of any expenditure of $25.00 or more must be supported by a receipt. The contractor shall be provided with a copy of any notification of such expenditures.

(h) The contractor shall be responsible for any costs incurred in excess of the total amount allotted by the Laboratory to this contract, and thereafter, the clause entitled "Limitation of Cost" shall be inapplicable.

56. 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 directly or indirectly promised, given, or paid in connection with (i) an offer to or contract with the contractor, subcontractor, or subcontractor employee, or (ii) a subcontractor to the contractor, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with the Violation of a condition precedent to the performance of a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, a labor union, stock company, individual, or sole proprietorship.

"Prime contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

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

"Prime contract," 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.

"Recipient," as used in this clause, means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract.

"Representative," as used in this clause, means any person who offers to furnish or furnishes supplies, materials, equipment, or services of any kind under a prime contract for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with the violation of a condition precedent to the performance of a prime contract.

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

(b) Prohibition on kickbacks.

"Kickbacks" are prohibited as defined above.

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

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

"Prime contract," 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.

"Recipient," as used in this clause, means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract.

(c) Prohibition on solicitations.

"Prime contract" as used in this clause, means any, partner, employee, or agent of a prime contractor. If, after notification, additional funds are not allotted by the end of the period specified in the Schedule, the contractor shall notify the Authorized Laboratory Procurement Official in writing of the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Change orders 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.

(e) If this contract is terminated or the estimated cost is not increased, the Laboratory and the contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

57. CONSIDERATION 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 contractor employee personnel who are assigned to the contract as a result of a subcontract or other arrangement), the contractor shall pay their time and related expenses to the extent of the contractor's share of the cost of labor.

(b) Materials, Supplies, Travel Costs. The actual direct cost to the contractor for materials, and computer time necessary for the performance of the work under this contract; however, materials purchases or contractual arrangements for the purchase of property or services of any kind under a prime contract on that later date.

(c) Travel. In connection with furnishing the services under this contract it may be necessary for contractor personnel to make authorized trips from time to time on official business. It is noted that the contractor is responsible for the payment of the allocated costs. When unable to charge the Government for such benefits, it shall promptly notify the Laboratory to that effect, and give the reason therefore. Credit shall be charged to the contractor for the cost incurred on that later date.

58. PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

(a) Definitions. As used in this clause, the term "employer" shall be defined as presented by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBTQIFORMS.html.
“Segregated facilities,” means any waiting rooms, work areas, restrooms, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by race, color, religion, sex, national origin because of written or oral policies or practices of the contractor. The term does not include restrooms which are segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or practices of the contractor. The term does not include a waiting room if it is not used primarily for the purpose of waiting for transportation, if the physical environment of such a waiting room is not designed or used primarily for waiting for transportation, if the operator of the waiting room is not primarily a transportation facility, if the operator is not primarily engaged in providing transportation for the general public, or if the operator is primarily engaged in providing transportation services for employees of the contractor, subcontractor, subsubcontractor, or other employees of the contractor or subcontractor.

“Sex trafficking” means- (1) The use of the threat or use of force, coercion, or fraud, or coercion in which the person induced to perform such act has not attained 18 years of age; or (2) The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of facilitating commercial sex acts through the use of force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (3) The use of the threat or use of force, coercion, or fraud, or coercion to cause a person to engage in a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor means any person; distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States” means the 50 States, the District of Columbia, and outlying areas.

United States International Trade Commission means an agency established by the President, by and with the advice and consent of the Senate, to investigate complaints and prohibit inclusion in this contract, provisions relating to the inclusion of contractors, contractor employees, and their agents.

(3) The Contractor shall include the substance of this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(b) “Commercially available off-the-shelf (COTS)” item, as used in this clause-

(i) Do not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(ii) Do not include a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(iii) Do not include a commercial item (as defined in paragraph (2) of the definition at FAR 2.101);

(iv) Do not include a commercial item (as defined in paragraph (3) of the definition at FAR 2.101);

(v) Do not include a commercial item (as defined in paragraph (4) of the definition at FAR 2.101);

(vi) Do not include a commercial item (as defined in paragraph (5) of the definition at FAR 2.101);

(vii) Do not include a commercial item (as defined in paragraph (6) of the definition at FAR 2.101);

(viii) Do not include a commercial item (as defined in paragraph (7) of the definition at FAR 2.101);

(ix) Do not include a commercial item (as defined in paragraph (8) of the definition at FAR 2.101);

(x) Do not include a commercial item (as defined in paragraph (9) of the definition at FAR 2.101);

(xi) Do not include a commercial item (as defined in paragraph (10) of the definition at FAR 2.101);

(xii) Do not include a commercial item (as defined in paragraph (11) of the definition at FAR 2.101);

(xiii) Do not include a commercial item (as defined in paragraph (12) of the definition at FAR 2.101);

(xiv) Do not include a commercial item (as defined in paragraph (13) of the definition at FAR 2.101);

(xv) Do not include a commercial item (as defined in paragraph (14) of the definition at FAR 2.101);

(xvi) Do not include a commercial item (as defined in paragraph (15) of the definition at FAR 2.101);

(xvii) Do not include a commercial item (as defined in paragraph (16) of the definition at FAR 2.101);

(xviii) Do not include a commercial item (as defined in paragraph (17) of the definition at FAR 2.101);

(xix) Do not include a commercial item (as defined in paragraph (18) of the definition at FAR 2.101);

(xx) Do not include a commercial item (as defined in paragraph (19) of the definition at FAR 2.101);

(2) The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf item, to- (A) Institute the requirements of this clause at the subcontractor level; and

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation; (C) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(3) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands.

(2) The Contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraphs (b)(7)(i) through (b)(7)(vi) of this clause apply.

(c) Contractors shall-

(1) Notify its employees and agents of-

(i) The United States Government’s policy prohibiting trafficking in persons, described in paragraphs (2) and (3) of this clause;

(ii) The actions that will be taken against employees or agents for violations of this policy, described in paragraph (2)(ii) of this clause; and

(iii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent, that act in conduct in violation of the policy in paragraph (2)(i) of this clause;

(2) Take appropriate action, up to and including termination, against employees, agents, or contracts that do not comply with the policy in paragraph (b)(2) of this clause.

(d) Notice.

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of- (i) Any credible information it receives from any source (including host country law enforcement and immigration authorities) that alleged a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b)(2) of this clause,

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent, that act in conduct in violation of the policy in paragraph (b)(2) of this clause;

(iii) If the allegation may be associated with more than one contract, the Contractor shall inform the Contracting officer for the contract with the highest dollar value.

(e) Remedies. In addition to the remedies described in paragraph (d) of this clause, the Contractor shall-

(1) Take appropriate legal action to remove a Contractor employee or employees from the performance of the contract;

(2) Require the Contractor to terminate a subcontract;

(3) Spread the costs of payments until the Contractor has taken appropriate remedial action;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declination to exercise any available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Any other determination or action by the Contracting Officer.

Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial action for the violation that may not have been responsible for the victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(f) Full cooperation. The Contractor shall, at a minimum—

(1) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(2) Provide timely and complete responses to Government auditors and investigators’ requests for documents;

(3) Cooperate fully in the Department’s Un放开able access to its facilities and staff (both inside and outside of the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct an inquiry or investigation, or to otherwise assist in determining whether a compliance plan was in place, or other action to assure compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13607, or any other applicable law or regulation establishing restrictions on trafficking in persons, the prosecution of commercial sex acts, or the use of forced labor,

(4) Protect all employees suspected of being victims or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the contracting officer thereafter, keep the LPO informed of the results of the investigation and, if required subsequently, provide a report to the contracting officer for a copy of the evidentiary record, the investigative report, any recommendations made to the contractor's adjudicating official, the findings of the contractor's investigation and any corrective action taken or planned, and the subject’s written response (if any).

(6) The Contractor may elect to have an independent contractor in conducting an inquiry or investigation into an allegation of research misconduct if the LPO finds that—

(a) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(b) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(c) The Laboratory involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(d) The allegations involve research misconduct.

(7) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the LPO, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that information about allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include, but are not limited to, protection against retaliation, fair and impartial procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide the subjects of allegations confidence that their rights are protected and that the filing of allegations of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations, the contractor's good faith administration of the clause and the knowledge of the identity of the subjects of allegations and informants should be limited to those with a need to know.

(2) Remediation and Sanction. If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in progress. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restraints, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the LPO. The contractor must also consider whether personnel sanctions are appropriate. Any such conduct consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and the manner in which it was knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) The Laboratory reserves the right to pursue such remedies and other actions as it deems appropriate and consistent with the terms and conditions of applicable laws and regulations. However, the contractor’s good faith administration of this clause and the implementation of its remedial actions and safeguards and shall be taken into account as mitigating factors in assessing the need for such actions. If the Laboratory pursues any such action, it will inform the subject of the action and any applicable appeal procedures.

73. RESEARCH MISCONDUCT (JUL 2005)

(a) The contractor is responsible for maintaining the integrity of research performed pursuant to this contract by documenting all efforts to prevent, detect, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct.

(b) Unless otherwise instructed by the Laboratory Procurement Official (LPO), the contractor must conduct an initial inquiry into any allegation of research misconduct. If the contractor determines through the initial inquiry that the allegation is not supported by a reasonable basis, it must notify the contracting officer and, unless otherwise instructed, the contractor must:

(1) Maintain an investigatory record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

(2) If the investigator determines that the allegation is not supported by a reasonable basis, the investigator must:

(i) Provide timely and complete responses to Government auditors and investigators’ requests for documents;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights;

(iii) Provide timely and complete responses to Government auditors and investigators’ requests for documents.

(3) Inform the LPO if an initial inquiry supports a finding of research misconduct.

(d) The contractor may elect to have an independent contractor in conducting an inquiry or investigation into an allegation of research misconduct if the LPO finds that—

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) The Laboratory involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(4) The allegations involve research misconduct.

(e) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the LPO, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that information about allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include, but are not limited to, protection against retaliation, fair and impartial procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide the subjects of allegations confidence that their rights are protected and that the filing of allegations of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations, the contractor's good faith administration of the clause and the knowledge of the identity of the subjects of allegations and informants should be limited to those with a need to know.

(f) Remediation and Sanction. If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in progress. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restraints, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the LPO. The contractor must also consider whether personnel sanctions are appropriate. Any such conduct consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and the manner in which it was knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(2) The Laboratory reserves the right to pursue such remedies and other actions as it deems appropriate and consistent with the terms and conditions of applicable laws and regulations. However, the contractor’s good faith administration of this clause and the implementation of its remedial actions and safeguards and shall be taken into account as mitigating factors in assessing the need for such actions. If the Laboratory pursues any such action, it will inform the subject of the action and any applicable appeal procedures.

(g) Definitions

(1) “Adjudication” means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

(2) “Fabrication” means making up data or results and recording or reporting them.

(3) “Falsification” means manipulating research materials, equipment, or processes, or changing or misrepresenting data or results and recording or reporting them.

(4) “Research misconduct” means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

(5) “Research record” means the record of all data or results that embody the facts resulting from research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restraints, controls, or other parameters on research in process or to be conducted in the future.
Site Access

Site access, including cyber access utilizing a Laboratory account, by all non-U.S. citizens must be reviewed and approved by the Laboratory Director or his designee. All new requests must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for 30 days or less) or assignees (on site for more than 30 days in a 12-month period). A certified host must be assigned for each visit or assignment. Form ANL-593 should be submitted as far in advance as possible, with a minimum of 30 days for a sensitive assignment, 7 days for a non-sensitive assignment and vice versa.

For assignments (more than 30 days) involving a foreign national from a “Sensitive Country”, and/or access to a security area of the Laboratory or access to a sensitive subject, at least 30 days advance notice should be provided to ensure that Security, Counterintelligence, and Export Control reviews can be accomplished, and a DOE indices check can be completed prior to approval. In such cases, a specific set of export control laws and regulations to which the Laboratory shall submit the ANL-593 form requesting the visit by the Hosting Division. An indices check normally takes 30 days after completion of all required pre-clearance documents, but can take considerably longer (once obtained, a full check is valid for two years).

For visits or assignments involving a foreign national from a “Terrorist Supporting Country” (which currently includes Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria), specific approval of the visit/assignment by the Secretary of Energy or his designee is required. This approval, if granted, may take up to one year after the internal approvals have been processed. The time frame noted above shall not constitute the basis for equitable adjustment or claim to the contract price or performance/delivery period.

For assistance in preparing a request, contact the Argonne Technical Investigator associated with your activity

Activity Participation

Due to Department of Energy directives and Department of Commerce regulations, persons who are born in and are not naturalized U.S. Citizens or are citizens of any “Terrorist Supporting Country” may be denied access and/or participation in activities with Argonne National Laboratory. The requirement is to be flowed down to all subcontractors at any tier.

65. COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)

(a) The Contractor shall comply with all applicable U.S. export control laws and regulations.

(b) The Contractor’s responsibilities to comply with all applicable laws and regulations extends to any and all licenses or other authorization provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to:

(1) The Atomic Energy Act of 1945, as amended;

(2) The Arms Export Control Act (22 U.S.C. 2761 et seq.);


(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);

(5) Assistance-to-Foreign Atomic Energy Activities (10 C.F.R part 810);

(6) Export and Import of Nuclear Equipment and Material (10 C.F.R part 110);

(7) International Traffic in Arms Regulations (ITAR) (22 C.F.R parts 120 through 130);

(8) Export Administration Regulations (EAR) (15 C.F.R parts 730 through 774); and

(9) Regulations administered by the Office of Foreign Assets Control (31 C.F.R. parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unrestricted fundamental research generally do not involve any export-controlled activities. NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act; or the regulations that implement those statutes (e.g., the ITAR, the EAR, 10 C.F.R part 110 and 10 C.F.R part 810). Thus, if items (e.g., commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

66. EXPORT LICENSE AGREEMENT (AUG 2002)

The contractor understands that the materials and/or information being transmitted under the performance of this contract may be subject to U.S. Government laws and regulations regarding export or re-export. This includes deems exports which are any communication of technical data to a foreign national, whether in the United States or any other country or which is transmitted by any means, including by a technical information (data) provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or workshops, or through computer networking is an export. If a foreign national receives or accesses equipment or a process, it may constitute an export of technical data, if significant details are revealed. It is solely the contractor’s obligation to obtain all appropriate export licenses, keep required records, and comply fully with all export control laws and regulations. The contractor agrees not to export directly or indirectly any technology, software or materials provided by DOE in the performance of this contract. The contractor shall be solely liable for any violation of export control statutes, or regulations, and shall indemnify and hold the Department of Energy, UCChicago Argonne, LLC, and the Laboratory harmless from any liability that may arise for any such violation.

67. 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 nuclear nonproliferation objectives. Although much of the work Argonne and its contractors perform is subject to Federal and non-Federal environmental protection laws, codes, ordinances, Executive Orders, regulations, and directives.

68. LIMITATIONS PERIOD (AUG 2001)

Any action brought by the contractor for breach of contract, request for equitable adjustment, or any other suit must be commenced within two years of the last payment by the Laboratory Procurement Official. Such written notification must be received by the Laboratory Procurement Official within two years of the last payment by the Laboratory Procurement Official. If no written notice is provided, no suit or claim arising under the contract must be identified in writing to the Laboratory Procurement Official. Such written notice must be received by the Laboratory Procurement Official within two years of the last payment by the Laboratory Procurement Official. If no written notice is provided, no suit or claim arising under the contract must be identified in writing to the Laboratory Procurement Official. Such written notice must be received by the Laboratory Procurement Official within two years of the last payment by the Laboratory Procurement Official. If no written notice is provided, no suit or claim arising under the contract must be identified in writing to the Laboratory Procurement Official. Such written notice must be received by the Laboratory Procurement Official within two years of the last payment by the Laboratory Procurement Official.

69. 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.

70. 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.

71. ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2013)

(a) Definitions. As used in this clause—

“Driving”—

(1) 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 predetermined in advance and neither driver is engaged in driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order No. 13613, 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) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles while 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) Establishing new rules and procedures for 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 (b), in all subcontracts that exceed the micro-purchase threshold.

72. 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 further negotiations or agreements other than those incorporated into this contract.

73. TECHNICAL STANDARDS PROGRAM (FEB 2012)

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 or performing an evaluation for the purpose of selecting DOE missions and functions, must:

2. Comply with 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; when on official Government business or while temporarily stationed because of traffic, a traffic light, stop sign, or otherwise.

4. Designate and provide support for a coordinator for technical standards activities, including the development of the above Subject Matter Expert and 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 (COA). [Use Form DOE F 1300.2 (05/2010)].
6. Flow down this requirement to subcontractor(s) at any tier to the extent necessary to ensure the contractor's compliance with these requirements.

75. 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; valves; pipe and fittings; electrical equipment and devices; plate, bar, 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 Bolt Headmark List

Any bolt on this list should be treated as defective without further testing.

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="image1.png" alt="Grade 5" /></td>
<td><img src="image2.png" alt="Grade 8" /></td>
</tr>
</tbody>
</table>

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>
</tbody>
</table>

Grade 8 fasteners with the following manufacturers' 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 8 fasteners with the following manufacturers' headmarks:

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Asahi Mfg. (JP)</td>
</tr>
<tr>
<td>NF</td>
<td>Nippon Fasteners (JP)</td>
</tr>
<tr>
<td>H</td>
<td>Hinomoto Metal (JP)</td>
</tr>
<tr>
<td>M</td>
<td>Minamida Sinyo (JP)</td>
</tr>
<tr>
<td>MS</td>
<td>Minato Kogyo (JP)</td>
</tr>
<tr>
<td>Hollow Triangle</td>
<td>Intasco (CA, TW, JP, and YU) (Greater than 1/2-inch diameter)</td>
</tr>
<tr>
<td>E</td>
<td>Daiei (JP)</td>
</tr>
</tbody>
</table>

Grade 8.2 fastener with the following headmark:

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

Headmarkings are usually raised – sometimes indented.

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