ANL-526 (May 10, 2012)

APPENDIX A
ARGONNE TERMS AND CONDITIONS
(For Fixed-Price Construction Contracts)

1. Notice To Proceed (Oct 1999) 2
2. Displaced Employee Hiring Preference (Jun 1997) 2
3. Covenant Against Contingent Fees (Apr 1984) 2
4. Equal Opportunity (Mar 2007) 2
5. Employment Reports Veterans (Sept 2010) 2
6. Equal Opportunity For Veterans (Sept 2010) 2
7. Notification Of Employee Rights Under Federal Labor Laws - Executive Order 13496: (Apr2010) 3
8. Notification Of Employee Rights Under The National Labor Relations Act (Dec 2010) 3
9. Employment Eligibility Verification (Jan 2009) 3
10. Personal Identity Verification Of Contractor Personnel (Jan 2011) ... 4
11. Affirmative Action For Workers With Disabilities (Oct 2010) 4
12. Security (Mar 2011) 4
13. Classification/Declassification (Sep 1997) 5
14. Clean Air And Water (Apr 1984) 5
15. Energy Efficiency In Energy-Consuming Products (Dec 2007) 6
16. Toxic Chemical Release Reporting (Aug 2003) 6
17. Notice Of Radioactive Materials (Jan 1997) 6
18. Preference For U.S. Flag Air Carriers (Jun 2003) 6
19. Preference For Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) 6
20. Applicable Law (Oct 1999) 7
21. Small Business Subcontracting Plan (Jan 2011) 7
22. Utilization Of Small Business Concerns (Jan 2011) 8
23. Protecting The Government's Interest When Subcontracting With Contractors Debarred, Suspended, Or Proposed For Debarment (Dec 2010) – 9
24. Notice To The Laboratory Of Labor Disputes (Oct 1999) 9
25. Reports (Oct 1997) 9
26. Subcontractor Cost Or Pricing Data (Oct 2010) 9
27. Subcontractor Cost Or Pricing Data--Modifications (Oct 2010) 9
28. Price Reduction For Defective Certified Cost Or Pricing Data (Aug 2011) 9
29. Price Reduction For Defective Certified Cost Or Pricing Data—Modifications (Aug 2011) 9
30. Specifications And Drawings For Construction (Oct 1999) 10
31. Site Investigation And Conditions Affecting The Work (Oct 1999) .. 10
32. Differing Site Conditions (Oct 1999) 10
33. Prohibition Of Segregated Facilities (Feb 1999) 10
34. Changes (June 2007) 10
35. Superintendence By The Contractor (Oct 1999) 10
36. Material And Workmanship (Mar 2003) 11
37. Payments (Feb 2004) 11
38. Bankruptcy (Jul 1995) 11
39. Inspection Of Construction (Oct 1999) 11
40. Schedules For Construction Contracts (Oct 1999) 11
41. Permits And Responsibilities (Oct 1999) 11
42. Use And Possession Prior To Completion (Oct 1999) 11
43. Environment, Safety And Health (Feb 2007) 12
44. Environmental Protection (May 2001) 14
45. Limitations Period (May 2001) 14
46. Assignment And Subcontracting (Oct 1999) 14
47. Subcontracts For Commercial Items (Dec 2010) 14
48. Non-Waiver Of Defaults (Oct 1999) 14
49. Warranty Of Construction (Oct 1999) 14
50. Bonds And Insurance (Oct 1999) 14
51. Additional Bond Security (Oct 1999) 15
52. Other Contracts (Oct 1999) 15
53. Buy American Act—Construction Materials (Sep 2010) 15
54. Government/Laboratory Property (Oct 1999) 15
55. Suspension Of Work (Oct 1999) 16
56. Contract Work Hours And Safety Standards Act – Overtime Compensation (Jul 2005) 16
57. Davis-Bacon Act (July 2005) 17
58. Davis-Bacon Act – Price Adjustment (None Or Separately Specified Method) (Dec 2001) 17
59. Withholding Of Funds (Feb 1988) 17
60. Payrolls And Basic Records (June 2010) 17
61. Apprentices And Trainees (July 2005) 18
62. Compliance With Copeland Act Requirements (Feb 1988) 18
63. Subcontracts (Labor Standards) (Jul 2005) 18
64. Contract Termination - Debarment (Feb 1988) 18
65. Compliance With Davis-Bacon And Related Act Regulations (Feb 1988) 18
66. Disputes Concerning Labor Standards (Feb 1988) 18
67. Certification Of Eligibility (Feb 1988) 18
68. Approval Of Wage Rates (Oct 1999) 18
69. Affirmative Action Compliance Requirements For Construction (Feb 1999) 18
70. Federal, State, And Local Taxes (Apr 2003) 19
71. Termination For Convenience Of The Government (Fixed-Price) (May 2004) 19
72. Default (Oct 1999) 21
73. Anti-Kickback Procedures (Oct 2010) 21
74. Restriction On Certain Foreign Purchases (Jun 2008) 21
75. Restrictions On Subcontractor Sales To The Government (Sep 2006) – Applicable To Contracts Which Exceed $100,000 21
76. Whistleblower Protection For Contractor Employees (Dec 2000) 21
77. Combating Trafficking In Persons (Feb 2009) 21
78. Limitation On Payments To Influence Certain Federal Transactions (Oct 2010) 22
79. Accounts, Records, And Inspection (Dec 2010) 23
80. Laboratory Site Access And /Or Participation In Activities By Non-U.S. Nationals (Dec 2004) 23
81. Export License Agreement (Aug 2002) 23
82. Export Control Information For Foreign Travel (Nov 2002) 23
83. Vehicle Liability Insurance Coverage (May 2001) 23
84. Encouraging Contractor Policies To Ban Text Messaging While Driving (Aug 2011) 23
85. Integration Clause (May 2001) 24
86. Technical Standards Program (Feb 2011) 24
87. Suspect Counterfeit Parts (Dec 2007) 24

1. NOTICE TO PROCEED (OCT 1999)

This contract is designated as high risk. The contractor shall not commence work under this contract unless and until the contractor receives a notice to proceed issued by the Procurement Representative.

2. DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Applicability.
This clause applies to all contracts (except for commercial items) in excess of $500,000.
(b) Definition.
"Eligible employee" means a current or former employee of a contractor or subcontractor employed at 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 also met the eligible criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with 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
(c) 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.
(d) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403 expected to exceed $500,000.

3. COVENANT AGAINST CONTINGENT FEES (APR 1984)

(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 employee or agency. For breach or violation of this warranty, the Laboratory shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.
"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.
"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.
"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

4. EQUAL OPPORTUNITY (MAR 2007)

(a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).
(c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not 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 forms of compensation; and
(viii) Selection for training, including apprenticeship.

(3) 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.
(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
(5) 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 notice in conspicuous places available to employees and applicants for employment.
(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
(10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
(11) The Contractor shall take such action with respect to any subcontract or purchase order 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 direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

5. EMPLOYMENT REPORTS VETERANS (SEPT 2010)

This clause applies to all subcontracts with a value in excess of $100,000 unless exempted by rules, regulations, or orders of the Secretary of Labor.
(a) Definitions. As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause 52.222-35.
(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.
(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and
(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.
(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."
(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.
(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12–month period preceding the ending date selected for the report. Contractors may select an ending date—
(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.
(g) The Contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

6. EQUAL OPPORTUNITY FOR VETERANS (SEPT 2010)

This clause applies to all subcontracts with a value of $100,000 or more
(a) Definitions. As used in this clause—
"All employment openings" means all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.
"Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).
"Disabled veteran" means—
(1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
(2) A person who was discharged or released from active duty because of a service-connected disability.
"Executive and senior management" means—
(1) Any employee—
(i) Compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
(ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
(iii) Who customarily and regularly directs the work of two or more other employees; and
(iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
(2) Any employee who owns at least a bona fide 20–percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

"Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.
"Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.
"Recently separated veteran" means any veteran during the three–year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) General.
(1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:
(i) Recruitment, advertising, and job application procedures.
(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
(iii) Rate of pay or any other form of compensation and changes in compensation.
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
(v) Leaves of absence, sick leave, or any other leave.
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
(viii) Activities sponsored by the Contractor including social or recreational programs.
(vi) Any other term, condition, or privilege of employment.
(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of $100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(c) Listing openings.
(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.
(2) The Contractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(e) Postings.
(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
(2) The employment notices shall—
(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and
(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.
(3) The Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (52.222-35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60-300.66) may include—
(1) Withholding progress payments;
(2) Termination or suspension of the contract; or
(3) Debarment of the contractor.

(g) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of $100,000 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.

7. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS - EXECUTIVE ORDER 13496: (APR2010)

(APPLIES TO CONTRACTS EQUAL TO OR GREATER THAN $10,000)
Federal contractors and subcontractors are required to inform employees of their rights under the National Labor Relations Act (NLRA), the primary law governing relations between unions and employers in the private sector. See 29 CFR Part 471. The notice, prescribed in the Department of Labor's regulations, informs employees of Federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. Additionally, the notice provides examples of illegal conduct by employers and unions, and it provides contact information to the National Labor Relations Board (www.nlrb.gov), the agency responsible for enforcing the NLRA. Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform contract-related activity, including all places where notices to employees are customarily posted both physically and electronically.
Obtaining Copies of the Notice of Employee Rights
Executive Order 13496 Notice of Employee Rights, in Adobe Reader (.pdf) format, can be downloaded from the link: http://www.dol.gov/olms/regs/compliance/EmployeeRightsPoster11x17_Final.pdf. If you are not able to download the notice, or if you seek a hard copy of the notice, you can send a request to olms-public@dol.gov or call (202) 693-0123. Contractors may also reproduce and use exact duplicate copies of the official notice.

- Notice of Employee Rights Under Federal Labor Laws - 11x17-inch one-page format (PDF)
- Notice of Employee Rights Under Federal Labor Laws - 11x8.5-inch two-page format (PDF)

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

Applies To 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 form, and containing such content as prescribed 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 employees speak, in accordance with 29 CFR 471.2(d) and (f).
(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contact.
(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—
(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
(2) Provided by the Federal contracting agency if requested;
(3) Downloaded from the Office of Labor-management Standards Web site at http://www.dol.gov/olms/regs/compliance/EO13496.htm ; or
(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4 Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts.
(1) The Contractor 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 Unites States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.
(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.
(3) 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.
(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor ma request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

9. EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

Applies to:
(1) (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
(ii) Construction;
(2) Has a value of more than $3,000; and
(3) Includes work performed in the United States.

(a) Definitions. As used in this clause—
"Commercially available off-the-shelf (COTS) item"—
(1) Means any item of supply that is—
(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

"Employee assigned to the contract" means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—
(1) Normally performs support work, such as indirect or overhead functions; and
(2) Does not perform any substantial duties applicable to the contract.
"Subcontract" means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.
"United States," as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.
(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—
(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
(ii) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and
(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).
(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—
(i) All new employees.
(A) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or
(B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or
(ii) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).
(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only t new employees assigned to the contract.
(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—
(i) Enrollment in the E-Verify program; or
(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).
(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.
(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.
(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/E-Verify .

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—
(1) Is for—
(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
(ii) Construction;
(2) Has a value of more than $3,000; and
(3) Includes work performed in the United States.

10. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

a. The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

b. The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government;
1. When no longer needed for contract performance.
2. Upon completion of the Contractor employee's employment.
3. Upon contract completion or termination.

c. The Laboratory Procurement Official may delay final payment under a contract if the Contractor fails to comply with these requirements.

d. The Contractor shall insert the substance of clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Laboratory Procurement Official.

11. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)

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 without discrimination based upon their physical or mental disability in all employment practices such as --
(i) Recruitment, advertising, and job application procedures;
(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(iii) Rates of pay or any other form of compensation and changes in compensation;
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(v) Leaves of absence, sick leave, or any other leave;
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
(viii) Activities sponsored by the Contractor, including social or recreational programs; and
(ix) Any other term, condition, or privilege of employment.
(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(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 posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through the Contracting Officer.
(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 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.

12. SECURITY (MAR 2011)

a. Responsibility. It is the Contractor's duty to protect all classified information, special nuclear material, 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 matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

b. Regulations. The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

c. Definition of Classified Information. The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.

d. Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

e. Definition of Formerly Restricted Data. The term "Formerly 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 Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

f. Definition of National Security Information. The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against

unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

g. Definition of Special Nuclear Material. The term "special nuclear material" means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

h. Access authorizations of personnel.

1. The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

2. The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

i. A review must verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

ii. Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

iii. In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

iv. In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR Part 707.4. All positions requiring access authorizations are deemed testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

v. When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

vi. The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:

A. The date(s) each Review was conducted;

B. Each entity that provided information concerning the individual;

C. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

E. The results of the test for illegal drugs.

i. Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794). Contractors are encouraged to submit this information through the use of the online tool at https://foci.td.anl.gov. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

j. Foreign Ownership, Control, or Influence.

1. The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

2. If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

3. If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

4. The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

k. Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence 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.

l. Flow down to subcontracts. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require Subcontractor employees to possess access authorizations. Additionally, the Contractor must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in DEAR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any Subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

13. CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and the "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Government function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classified/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor of subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

14. CLEAN AIR AND WATER (APR 1984)

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

"Clean air standards," as used in this clause, means --

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410 (d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411 (c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412 (d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with --

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.)

(b) The contractor agrees --

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

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

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

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

(a) *Definition*. As used in this clause—
"Energy-efficient product"—
(1) Means a product that—
(i) Meets 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 term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).
(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;
(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, renovation, or maintenance.
(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless—
(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
(2) Otherwise approved in writing by the Contracting Officer.
(d) Information about these products is available for—
(1) ENERGY STAR® at http://www.energystar.gov/products; and
(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

16. TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(Applies to contracts exceeding $100,000 (including all options)
(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if —
(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
(4) The facility does not fall within Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
(i) Major group code 10 (except 1011, 1081, and 1094).
(ii) Major group code 12 (except 1241).
(iii) Major group codes 20 through 39.
(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, 5171, 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
(5) The facility is not located in the United States or its outlying areas.
(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt —
(1) The Contractor shall notify the Laboratory Procurement Representative; and
(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall —
(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
(ii) Continue to file the annual Form R for the life of the contract for such facility.
(d) The Laboratory Procurement Representative may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall —
(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

17. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Laboratory Procurement Representative or designee, in writing, *days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either
(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or
(2) Other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.
Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).
* The Laboratory Procurement Representative shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).
(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Laboratory Procurement Representative or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall —
(1) Be submitted in writing;
(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.
(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government or the Laboratory shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.
(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

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

(a) Definitions. As used in this clause -- International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
"United States" means the 50 States, the District of Columbia, and outlying areas.
"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(Fly America-Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
(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) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:
STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation):
[State reasons]:
(End of Statement)
(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.

19. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 2003)

(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, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
(1) Acquired for a U.S. Government agency account;
(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
(3) 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
(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
(b) The contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
(c) (1) The contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
(i) The Authorized Laboratory Procurement Official, and
(ii) The: Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590
Subcontractor bills of lading shall be submitted through the prime contractor.
(2) The contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days 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.
(d) The contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).
(e) The requirement in paragraph (a) does not apply to—
(1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
(2) Ocean transportation between foreign countries of 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) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
(4) Subcontracts or purchase orders for the acquisition of commercial items unless—
(i) This contract is—
(A) A contract or agreement for ocean transportation services; or
(B) A construction contract; or
(ii) The supplies being transported are—
(A) Items the contractor is reselling or distributing to the Government without adding value. (Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
(B) Shipped in direct support of U.S. military—
(1) Contingency operations;
(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

20. 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.

21. SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011)

This clause does not apply to small business concerns.

a. *Definitions*. As used in this clause

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626 (e)(2).

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

"Electronic Subcontracting Reporting System (eSRS)" means the Government-wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at http://www.esrs.gov.

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Laboratory Procurement Official. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

c. The offeror's subcontracting plan shall include the following:

1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:
   - i. Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantages business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
   - ii. Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
     - A. In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
     - B. If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
     - C. The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
     - D. If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

2. A statement of—
   - i. Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
   - ii. Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
   - iii. Total dollars planned to be subcontracted to veteran-owned small business concerns;
   - iv. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
   - v. Total dollars planned to be subcontracted to HUBZone small business concerns;
   - vi. Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
   - vii. Total dollars planned to be subcontracted to women-owned small business concerns.

3. A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to –
   - i. Small business concerns,
   - ii. Veteran-owned small business concerns;
   - iii. Service-disabled veteran-owned small business concerns;
   - iv. HUBZone small business concerns;
   - v. Small disadvantaged business concerns, and Women-owned small business concerns.

4. A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

5. A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

6. A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with –
   - i. Small business concerns (including ANC and Indian tribes);
   - ii. Veteran-owned small business concerns;
   - iii. Service-disabled veteran-owned small business concerns;
   - iv. HUBZone small business concerns;
   - v. Small disadvantaged business concerns (including ANC and Indian tribes); and
   - vi. Women-owned small business concerns.

7. The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

8. A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

9. Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $650,000 ($1.5 million for construction of any public facility with further subcontracting possibilities) to adopt a plan similar to the plan that complies with the requirements of this clause.

10. Assurances that the offeror will –
    - i. Cooperate in any studies or surveys as may be required;
    - ii. Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
    - iii. Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov . The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
    - iv. Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
    - v. Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and
    - vi. Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

11. A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
    - i. Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
    - ii. Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
    - iii. Records on each subcontract solicitation resulting in an award of more than $150,000, indicating –
      - A. Whether small business concerns were solicited and if not, why not;
      - B. Whether veteran-owned small business concerns were solicited and, if not, why not;
      - C. Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
      - D. Whether HUBZone small business concerns were solicited and, if not, why not;
      - E. Whether small disadvantaged business concerns were solicited and if not, why not;
      - F. Whether women-owned small business concerns were solicited and if not, why not; and
      - G. If applicable, the reason award was not made to a small business concern.
    - iv. Records of any outreach efforts to contact –
      - A. Trade associations;
      - B. Business development organizations;

C. Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
D. Veterans service organizations.

v. Records of internal guidance and encouragement provided to buyers through –
A. Workshops, seminars, training, etc., and
B. Monitoring performance to evaluate compliance with the program's requirements.

vi. On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

d. In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
1. Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
2. Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
3. Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
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 Central Contractor Registration (CCR) database or by contacting SBA.
5. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
6. For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

e. A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided –
1. The master plan has been approved;
2. The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
3. Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

f. A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

g. Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

h. A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

i. Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

j. The failure of the Contractor or subcontractor to comply in good faith with—
1. The clause of this contract entitled "Utilization Of Small Business Concerns;" or
2. An approved plan required by this clause, shall be a material breach of the contract.

k. The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.
1. *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.
i. The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.
ii. When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.
iii. The authority to acknowledge receipt or reject the ISR resides—
A. In the case of the prime Contractor, with the Contracting Officer; and
B. In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.
2. *SSR*.
i. Reports submitted under individual contract plans—
A. This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.
B. The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.
C. If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $650,000 (over $1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.
D. For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.
E. Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.
H. The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.
ii. Reports submitted under a commercial plan—
A. The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.
B. The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.
C. If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.
D. The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.
iii. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

22. UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract—
"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
"Service-disabled veteran-owned small business concern"—
(1) Means a small business concern—
(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—
(1) (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
(ii) No material change in disadvantaged ownership and control has occurred since its certification;
(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.
"Veteran-owned small business concern" means a small business concern—
(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
(2) The management and daily business operations of which are controlled by one or more veterans.
"Women-owned small business concern" means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
(2) Whose management and daily business operations are controlled by one or more women.

(d) (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—
(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or http://www.sba.gov/hubzone;
(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

23. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010) –

Applies To Contracts That Exceed $30,000 In Value

(a) Definition. "Commercially available off-the-shelf (COTS) item," as used in this clause—
(1) Means any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of $30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Laboratory Procurement Representative, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
(1) The name of the subcontractor.
(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—
(1) Exceed $30,000 in value; and
(2) Is not a subcontract for commercially available off-the-shelf items.

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

25. REPORTS (OCT 1997)

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

26. SUBCONTRACTOR COST OR PRICING DATA (OCT 2010)

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

(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 the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—
(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or
(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications.

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

(a) The requirements of paragraphs (b) and (c) of this clause shall—
(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4; and
(2) Be limited to such modifications.

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

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds 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.

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

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—
(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

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

(c) (1) 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:
(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.
(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
(2) (i) Except as prohibited by subdivision (c)(2)(ii) 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; and
(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
(ii) An offset shall not be allowed if—
(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
(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 before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) 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 shall be liable to and shall pay the United States at the time such overpayment is repaid—
(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

29. PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS (AUG 2011)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to

that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) 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 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 price was not itself affected by defective certified cost or pricing data.

(d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.
- (ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by paragraph (d)(2)(ii) 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; and
- (B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
- (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 before the "as of" date specified on its 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 shall be liable to and shall pay the United States at the time such overpayment is repaid—
- (1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

30. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (OCT 1999)

(a) The contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Laboratory access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Laboratory, who shall promptly make a determination in writing. Any adjustment by the contractor without such a determination shall be at its own risk and expense. The Laboratory shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," designation," or "prescription," of the Laboratory is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Laboratory, unless otherwise expressly stated.

(c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

(d) Shop drawings means drawings submitted to the Laboratory by the contractor, subcontractor, any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Laboratory may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Laboratory without evidence of the contractor's approval may be returned for resubmission. The Laboratory will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Laboratory's reasons therefore. Any work done before such approval shall be at the contractor's risk. Approval by the Laboratory shall not relieve the contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Laboratory approves any such variation, the Laboratory shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The contractor shall submit to the Laboratory for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Laboratory and one set will be returned to the contractor. Upon completing the work under this contract, the contractor shall furnish a complete set of reproducibles of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(h) This clause shall be included in all subcontracts at any tier.

31. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (OCT 1999)

(a) The contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Laboratory, as well as from the drawings and specifications made a part of this contract. Any failure of the contractor to take the actions described and acknowledged in this paragraph will not relieve the contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Laboratory.

(b) The Laboratory assumes no responsibility for any conclusions or interpretations made by the contractor based on the information made available by the Laboratory. Nor does the Laboratory assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

32. DIFFERING SITE CONDITIONS (OCT 1999)

(a) The contractor shall promptly, and before the conditions are disturbed, give a written notice to the Laboratory of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Laboratory shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Laboratory.

(d) No request by the contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

33. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

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

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

34. CHANGES (JUNE 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—
- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—
- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

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

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

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

35. SUPERINTENDENCE BY THE CONTRACTOR (OCT 1999)

At all times during performance of this contract and until the work is completed and accepted, the contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Laboratory and has authority to act for the contractor.

36. MATERIAL AND WORKMANSHIP (MAR 2003)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. To the maximum extent practicable the contractor shall use recycled products in the performance of this contract. The EPA Comprehensive Procurement Guidelines identifies products that use recycled material pursuant to 40 CFR 247. The contractor shall flow this requirement down to its lower tiered subcontractors. In the event a contractor or subcontractor is unable to procure such products because the product is not available: 1) within a reasonable time; b) at a reasonable price; c) within performance requirements, the contractor shall so advise the Laboratory Technical Representative. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Laboratory, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The contractor shall obtain the Laboratory's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the contractor shall furnish to the Laboratory the name of the manufacturer, the model number and other information concerning the performance, capacity, nature and rating of the machinery and mechanical and other equipment. When required by this contract or by the Laboratory, the contractor shall also obtain the Laboratory's approval of the material or articles which the contractor contemplates incorporating into the work. When requesting approval, the contractor shall provide full information concerning the material or articles.
When directed to do so, the contractor shall submit samples for approval at the contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Laboratory may require, in writing, that the contractor remove from the work any employee the Laboratory deems incompetent, careless, or otherwise objectionable.

37. PAYMENTS (FEB 2004)

(a) The Laboratory shall pay the contractor the contract price as provided in this contract.

(b) The Laboratory shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Laboratory, on estimates approved by the Laboratory. If requested by the Laboratory, the contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Laboratory may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the contractor at locations other than the site may also be taken into consideration if --
(1) Consideration is specifically authorized by this contract; and
(2) The contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) In making these progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Laboratory finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Laboratory may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, the Laboratory shall retain an amount that the Laboratory considers adequate protection of the Laboratory and may release to the contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.
Contractor shall ensure that all payments due to subcontractors and suppliers for accepted materials and services will be made from any progress payments received under this contract.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as --
(1) Relieving the contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
(2) Waiving the right of the Laboratory to require the fulfillment of all of the terms of the contract.

(e) The Laboratory shall, after receipt of a proper invoice, reimburse the contractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after furnishing evidence of full payment to the surety.

(f) Property.
(1) Property shall mean all tangible personal property as identified in Argonne Form PD-150, Control of Government Property – Contractor Requirements, in the section entitled, "IDENTIFICATION" that has been purchased by the contractor in the performance of the contract for which cost the contractor is entitled to be reimbursed as a direct item of cost under this contract or for which the contractor has included the cost for such property in the fixed price charged to the Laboratory.
(2) All INVOICES submitted under contracts which contain Argonne Form PD-150, Control of Government Property – Contractor Requirements, shall be accompanied by the completed form entitled, Argonne National Laboratory Subcontract Property Management Government Property Acquisition Record, ANL-661.
THE LABORATORY WILL NOT ISSUE PAYMENT UNLESS A COMPLETED FORM ANL-661 IS INCLUDED WITH ALL INVOICES (REGARDLESS IF PROPERTY IS BEING INVOICED ON A PARTICULAR INVOICE OR NOT.)

(g) The Laboratory shall pay the amount due the contractor under this contract after --
(1) Completion and acceptance of all work;
(2) Presentation of a properly executed voucher; and
(3) Presentation of release of all claims against the Laboratory and the Government arising by virtue of this contract. A release may also be required of the assignee if the contractor's claim to amounts payable under this contract has been assigned.

(h) Terms: Net thirty (30) days.

(i) Submission of Transportation Documents
(1) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid --
(A) By the Contractor and added to the invoice for contractor supplied goods and/or services.
(B) By a first-tier subcontractor and added to the invoice for contractor supplied goods and/or services
(2) Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $200. Bills under $200 shall be retained on-site by the Contractor and made available for on-site audits.
(3) Contractors shall submit the above referenced transportation documents with Contractor's invoice to - Argonne National Laboratory, 9700 South Cass Avenue, Accounts Payable Building 201, Lemont, IL 60439

38. BANKRUPTCY (JUL 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Laboratory Procurement Official responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Laboratory contract numbers for all Laboratory contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

39. INSPECTION OF CONSTRUCTION (OCT 1999)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this contract conforms to contract requirements. The contractor shall maintain complete inspection records and make them available to the Laboratory. All work shall be conducted under the general direction of the Laboratory and is subject to Laboratory inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Laboratory inspections and tests are for the sole benefit of the Laboratory and do not--
(1) Relieve the contractor of responsibility for providing adequate quality control measures;
(2) Relieve the contractor of responsibility for damage to or loss of the material before acceptance;
(3) Constitute or imply acceptance; or
(4) Affect the continuing rights of the Laboratory after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Laboratory inspector does not relieve the contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Laboratory's written authorization.

(e) The contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Laboratory. The Laboratory may charge to the contractor any additional cost of inspection or test when work is not ready at the time specified by the contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Laboratory shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The contractor shall, without charge, replace or correct work found by the Laboratory not to conform to contract requirements, unless in the public interest the Laboratory consents to accept the work with an appropriate adjustment in contract price. The contractor shall promptly segregate and remove rejected material from the premises.

(g) If the contractor does not promptly replace or correct rejected work, the Laboratory may (1) by contract or otherwise, replace or correct the work and charge the cost to the contractor or (2) terminate for default the contractor's right to proceed.

(h) If, before acceptance of the entire work, the Laboratory decides to examine already completed work by removing it or tearing it out, the contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the contractor or its subcontractors, the contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Laboratory shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Laboratory shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Laboratory determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Laboratory's rights under any warranty or guarantee.

40. SCHEDULES FOR CONSTRUCTION CONTRACTS (OCT 1999)

(a) The contractor shall, within five days after the work commences on the contract or another period of time determined by the Laboratory, prepare and submit to the Laboratory for approval three copies of a practicable schedule showing the order in which the contractor proposes to perform the work, and the dates on which the contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the contractor fails to submit a schedule within the time prescribed, the Laboratory may withhold approval of progress payments until the contractor submits the required schedule.

(b) The contractor shall enter the actual progress on the chart as directed by the Laboratory, and upon doing so shall immediately deliver three copies of the annotated schedule to the Laboratory. If, in the opinion of the Laboratory, the contractor falls behind the approved schedule, the contractor shall take steps necessary to improve its progress, including those that may be required by the Laboratory, without additional cost to the Laboratory. In this circumstance, the Laboratory may require the contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules, in chart form as the Laboratory deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the contractor to comply with the requirements of the Laboratory under this clause shall be grounds for a determination by the Laboratory that the contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Laboratory may terminate the contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

41. PERMITS AND RESPONSIBILITIES (OCT 1999)

The contractor shall, without additional expense to the Laboratory, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The contractor shall also be responsible for all damages to persons or property that occur as a result of the contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

42. USE AND POSSESSION PRIOR TO COMPLETION (OCT 1999)

(a) The Laboratory shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Laboratory shall furnish the contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Laboratory intends to take possession of or use. However,

failure of the Laboratory to list any item of work shall not relieve the contractor of responsibility for complying with the terms of the contract. The Laboratory's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Laboratory has such possession or use, the contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Laboratory's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Laboratory delays the progress of the work or causes additional expense to the contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

43. ENVIRONMENT, SAFETY AND HEALTH (FEB 2007)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of Argonne, DOE, and contractor employees and of members of the public and to protect the environment. This includes compliance with all the applicable Environment, Safety and Health (ES&H) regulations and requirements, including reporting requirements of DOE as identified by the Laboratory in writing from time to time. The regulations and requirements include Title 29 of the Code of Federal Regulations (CFR) including but not limited to parts 1910 and 1926, Title 40 CFR, Protection of Environment, 49 CFR, Transportation, and 10 CFR 851 Workers Safety and Health Program as well as other applicable state, federal, and local regulations for construction. The requirements also include the National Fire Protection Association (NFPA) 70E, "Standard for Electrical Safety in the Workplace." The contractor shall indemnify and hold the Laboratory harmless in the event DOE imposes a fine or penalty upon the Laboratory pursuant to a violation of 10 CFR 851, and such fine or penalty arises out of or is connected with the performance of work under this contract by the Contractor, its subcontractors, and/or their agents, representatives, servants or employees. The Laboratory shall notify the contractor, in writing, of any noncompliance with the provisions of this clause and the corrective action to be taken, which may include suspension of employees from the site. DOE, if appropriate, can issue a Notice of Violation which can be accompanied by a fine of $70,000 per day per citation. After receipt of such notice, the contractor shall immediately take corrective action. In the event the contractor fails to comply with regulations and requirements of this clause, the Laboratory may, without prejudice to any other legal and contractual rights of DOE or the Laboratory, issue an order stopping all or any part of the work. The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Laboratory Procurement Official may issue an order stopping work in whole or in part. Any stop work order issued by a Laboratory Procurement Official under this clause (or issued by the contractor to a subcontractor) shall be without prejudice to any other legal or contractual rights of the Government/Laboratory. In the event that the Laboratory Procurement Official issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Laboratory Procurement Official. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause. In the event the Laboratory subsequently issues an order to the contractor to resume work, the contractor shall make no claim for an extension of time or for compensation for damages by reason of, or in connection with, such work stoppage. The contractor shall assure that all its employees and its subcontractors, including subcontractors hired subsequent to the commencement of on-site activities, are aware of and are following the contractor's approved safety and health program including, but not limited to, the contractor's approved Corporate Safety Plan and approved Job Safety Analysis, as well as all regulations in this clause.

The Laboratory Procurement Official, the Laboratory Construction Management, Project Manager, Laboratory ES&H Representatives, and the Manager, Department of Energy, Argonne Site Office, have the authority to stop any work activity which is deemed to be in imminent danger of causing a fatality or serious injury.

A. Reporting Requirements

1. The contractor's supervisor shall call the Construction Management Office by 8:00 AM every day and report his company name, the contract number, and the number of employees, including both his and those of his subcontractor(s), expected on site that day. The phone number is 630-252-7200, unless the Laboratory Project Manager authorizes a different method of communicating the required information.
2. All contractor and subcontractor accidents and unauthorized releases to the environment occurring at the Laboratory site must be reported immediately by dialing 911 from a Laboratory telephone or pay phone, or 630-252-1911 from a cellular phone. The accident or unauthorized release must be reported immediately to the Project Specialist, Technical Representative or Project Manager. In addition, the contractor shall complete an ANL-240, Incident Investigation and Analysis Report and ensure that the injured employee and all witnesses to the incident complete an ANL-239, Incident Description and submit these to the Project Specialist or Project Manager within 24 hours.The types of emergencies that must be reported include but are not limited to: fire, explosion, personnel injury/illness, security incident, vehicle accident, utility failure, tornado sighting, possible contamination incident, or a toxic or flammable material spill or release.
3. The contractor shall investigate all Notice of Safety Violation forms PFS-530, complete the ANL-239, and ANL-240 forms (Paragraph A. 2. above), and submit these to the Project Specialist within 24 hours of receipt of the written citation.
4. The contractor is not authorized to dispose of any material on-site unless written approvals are obtained from the Laboratory. This includes but is not limited to the use of garbage and recycling dumpsters, the sinks in buildings, and discharges to the sewer systems. Violations shall be immediately reported to the Project Specialist.

B. Contractor Environment, Safety and Heath (ES&H) Program and Implementation Plan

1. Within ten (10) calendar days after award of the contract, the contractor shall submit its ES&H Program, also referred to as the Corporate Safety Plan (CSP), which contains all programs that are relevant to the contractor's business activities and at a minimum will contain all highlighted areas of the ES&H Program and Implementation Plan Review Guide (EQO-526), and Implementation Plan encompassing all applicable aspects of Title 29 of the Code of Federal Regulations including Part 1910, "OSHA Safety and Health Standards for General Industry," Part 1926, "Safety and Health Regulations for Construction," and 40 CFR, "Protection of Environment". The contractor is required to comply with the requirements set forth in its plan. The contractor's ES&H Program and Implementation Plan must be signed by a responsible company officer and as a minimum shall include the provisions set forth below.
   a. A statement of the contractor's ES&H policy;
   b. The name and qualifications of the contractor's ES&H Representative and alternate and the names of competent persons for excavation, scaffolding, and confined space entry, etc., as required by the scope of work and/or work conditions;
   c. The frequency of regular safety inspections to be conducted by the contractor;
   d. The schedule of weekly tool box meetings to be held with contractor employees to emphasize project safety and health, environmental protection, and fire prevention;
   e. The locations at which the "Worker Protection for DOE Contractor Employees" poster will be posted on the contractor's bulletin board:
   f. Implementation of all ES&H requirements listed in the contract, including the specifications;
   g. Employee's right to file a concern with DOE;
   h. Drug-Free Workplace requirements; and
   i. Disciplinary policy and procedures.
2. The contractor's ES&H Program and Implementation Plan will be reviewed for compliance with the requirements established above. (A guide for the development of the plan was included in the solicitation documents.) If found to be in compliance, the Laboratory will approve the plan. Otherwise, it will be returned to the contractor with comments on areas not in compliance. A pre-construction meeting will be held, and field work will begin only after the plan is approved. Any revisions subsequent to the initial approval shall be submitted and approved prior to the contractor's implementation of these revisions.
3. The contractor is responsible for reviewing and approving its subcontractors' ES&H Program(s) and Implementation Plan(s) which must comply with the requirements of this contract prior to commencement of work on site, and ensuring compliance during performance of the work.
4. If the contractor has an approved ES&H Program and Implementation Plan on file with the Laboratory, revisions necessary to address new work shall be submitted, reviewed, and approved prior to commencing new work.

C. Job Environmental Protection Planning

To the extent required by the project specifications, a sedimentation and erosion control plan and a storm water pollution prevention plan shall be implemented by the contractor. The requirements are detailed in the project specifications. All modifications to these plans must be approved prior to implementation. If changes are made to the project work scope that affect these plans, the plans shall be updated by the contractor and approved by the Laboratory prior to the revised work scope taking place.

D. Job Safety Analysis (JSA)

1. The contractor must submit within ten (10) calendar days after contract award and have approved, prior to the pre-construction meeting, a job safety analysis (ANL-209C) which details the specific hazards associated with each phase of the job as well as the mitigating actions the contractor shall take to reduce the risk of injury. Material Safety Data Sheets (MSDSs) for all chemicals used or brought on-site are to be submitted as part of this analysis. (A sample JSA form was provided in the solicitation documents.)
2. Specific procedures in the areas of fall protection, excavation, trenching, confined space, energized electrical work, asbestos abatement, and hoisting and rigging are required as job conditions dictate. Plans to address these activities must be submitted and approved prior to starting work. Names and qualifications of competent persons as defined by OSHA must be submitted for approval a minimum of seven (7) days prior to the start of those activities. Laboratory approval must be obtained prior to starting any job activity requiring an OSHA-defined competent person.
3. The contractor's ES&H representative shall provide a Job Safety Orientation to all contractor and subcontractor employees prior to their starting work. The orientation, as a minimum, shall include a review of the JSA, all related permits and plans, and a review of the emergency numbers, egress routes and assembly points. Each contractor employee shall sign the Job Safety Analysis form to indicate having received the orientation. The signature list shall be submitted to the Laboratory at the end of the first work day and throughout the duration of the contract when signatures are added. (The subjects to be covered by the orientation are listed in the solicitation documents.)
4. The Job Safety Analysis must be formally revised to incorporate changes as required by modifications in work scope during construction. The revisions must be approved prior to the activity taking place. All employees affected by any revisions to the approved JSA shall be notified and advised by the contractor consistent with D.3 (above).
5. For projects lasting more than four (4) months, at the discretion and approval of the Laboratory Project Manager, the submittal of the JSA corresponding to later phases of construction may be deferred. However, no aspect of the work is to proceed unless the applicable JSA has been submitted at least 4 weeks in advance of the work to the Project Manager and reviewed and approved by the Laboratory.

E. Contractor ES&H Representative

Contractors shall designate and identify a competent member of their organization whose duty shall be the implementation of the contractor's ES&H program on the Laboratory site.

1. The contractor shall submit the names and qualifications of the ES&H Representative and alternates to the Laboratory for approval prior to assignment of duties.
2. The ES&H Representative shall attend the pre-construction meeting and be present at all times work is being performed on site by the contractor or subcontractor. If the ES&H Representative must be off site, the contractor shall designate and notify the Laboratory of an alternate.
3. Duties include, but are not limited to: enforcing the company safety program as well as Argonne requirements, providing job specific safety orientation, prevention of accidents, investigation of incidents/accidents and Notice of Safety Violation(s), making daily inspections, and reporting safety related information.
4. The ES&H Representative must have the authority to stop work and change the operation to correct any deficiencies or to eliminate any hazards observed.
5. The ES&H Representative shall have taken, as a minimum, training equivalent to the OSHA 10 hour training course in construction safety before field work at Argonne begins. Documented evidence of attendance, signed by the OSHA certified instructor, shall be submitted to the Laboratory for approval.

F. Environment, Safety and Health Documentation

The contractor shall submit the following documents, current certificates, etc. as required:

1. Equipment inspection documentation required by 29 CFR 1926, Subpart N, must be with the equipment and shall be approved by the Laboratory prior to use. This includes, but is not limited to, personnel lifts, cranes, augers, suspended scaffolds, winches, spreader beams, and lifting devices.
2. If the contractor intends to administer first aid or Cardio Pulmonary Resuscitation (CPR), the contractor must comply with 29 CFR 1926, and supply a list of the names of employees who will administer first aid or CPR, along with current certification. This list shall be part of the Construction Job Safety Analysis.
3. Material Safety Data Sheets (MSDSs) must be maintained by the contractor at the job site. MSDSs for all products and materials brought on site shall be posted on the contractor's bulletin board accessible to all workers on the job site. In addition, all MSDSs must be submitted as part of the Construction Job Safety Analysis.
4. Pressure vessel certificates per 29 CFR 1926.29 must be submitted and approved prior to use.
5. Documentation of employee training and/or proof of proficiency required by OSHA and this contract shall be submitted for approval prior to commencement of work. Examples include CPR certifications, confined space training, respirator training, competent persons for excavations and scaffolding, NFPA 70E training for energized electrical work, appropriate asbestos abatement training, and fall protection training.
6. The Contractor shall, without additional expense to the Laboratory, be responsible for obtaining all necessary licenses.

G. Variances

Requests for exceptions to Laboratory environment, health, and safety requirements, contractor's approved ES&H Program and Implementation Plan, contractor's approved Job Safety Analysis, or specified environmental plans must be submitted in writing to the Laboratory. Exceptions shall not be implemented without approval by the Laboratory.

H. ES&H Orientation and Site Access

All contractor personnel are to attend ES&H orientation before starting work at the site. The training consists of two parts, Contractor Safety Orientation (CSO) provided by the Laboratory and job specific safety orientation conducted by the contractor.

The CSO lasts approximately one and one-half hours. This orientation is required on an annual basis. Upon completion of the orientation, each employee will receive a wallet card that

must be presented to Laboratory personnel upon request. Upon completion of the orientation, a gate pass will be issued to the contractor employee for the duration of the work or for a length of time to be decided by the Project Specialist. This pass is required for site access and is to be used only by the employee whose name appears on the pass. Any misuse of the pass will result in a suspension from site access for a period of six (6) months.

I. Equipment and Tool Inspection

All tools and equipment brought on site by contractors and subcontractors will be inspected by the Laboratory for compliance with OSHA and Laboratory requirements prior to use. Tools and equipment also will be randomly inspected throughout the duration of the contract. Items found out of compliance shall be removed immediately from service, tagged out of service and taken off site by the contractor by the end of that work shift.

J. Laboratory Site Rules

The following acts or conduct are prohibited at the Laboratory site and violations will result in disciplinary action.

1. Possession of weapons, firearms, ammunition, explosives or any other apparatus or material hazardous to the public or property.
2. Possession or illegal use of controlled substances or intoxicants or being under their influence.
3. Indecent behavior of any type.
4. Stealing, misuse or destruction of Laboratory or Government property.
5. Violation of site traffic and parking regulations.
6. Loitering outside of designated construction areas.
7. Using Laboratory facilities such as the Cafeteria and washrooms while wearing extremely dirty or contaminated clothes and shoes.

K. Laboratory Site ES&H Requirements

The following requirements must be included in the contractor's ES&H Program and Implementation Plan and implemented on the job site.

1. The Laboratory conducts work through the use of on-site permits. All required permits will be identified to the contractor and the Laboratory will arrange for all necessary permits. There is no cost to the contractor for any Laboratory permits and no work activity shall be performed without the required permits. Such permits include work entry clearance, energized electrical work, open flame, confined space entry, digging, moving Government or Laboratory property off site, and removing asbestos. When coring, cutting or drilling through floors, wall, ceilings and exterior foundation walls, the contractor shall follow the Blind Penetration Checklist. The contractor shall comply with all restrictions or provisions listed on the permits. A permit to bring radioactive sources or x-ray equipment on site must be approved 48 hours in advance. All coring and penetrating equipment shall be properly grounded. The use of powder actuated tools is prohibited without a variance and written permission from the EQO Division Director or his/her representatives. Allow three (3) business days to process this variance.
2. All contractors and sub-contractors performing work for the Laboratory, both on and off site, are responsible for complying with the "Employer Payment for Personal Protective Equipment –Final Rule" issued by OSHA. The Laboratory, by virtue of its position as a host employer is not responsible for the provision of nor payment for PPE required by or issued to workers other than direct Laboratory employees, temporary and permanent.
3. All employees shall wear safety glasses with rigid side shields at all times in the construction work area unless a higher level of eye protection is required for special hazards. All eye protection must meet the requirement of 29 CFR 1926.102. Safety glasses must be ANSI approved and be marked with the ANSI marking "Z87.1" designation.
4. Hard hats shall be worn at all times in the construction work area. Hard hats shall meet the ANSI Z89.1 standard as defined by 29 CFR 1926.100 and bear the "Z89-.1" designation. High voltage exposure work requires hard hats and shall meet ANSI Z89.2 standards and bear the "Z89.2" designation.
5. All employees shall wear clothing suitable for the work and weather conditions. The minimum shall be short (1/4 length) sleeve shirt, long trousers, and hard sole leather work boots providing ankle protection. In addition, any work that presents a greater hazard to the feet or toes requires the use of steel toes or metatarsal guards. Canvas, tennis, or deck shoes are not permitted within the construction work area.
6. Ground fault circuit interrupters must be provided for electric hand tools and portable generators. The assured equipment grounding program is not an acceptable alternative.
7. All vehicles and mobile powered equipment, except automobiles and pickup trucks, must have backup alarms.
8. Personnel lifts must be equipped with audible motion alarms for movement in any direction. All lifts must be equipped with a safety foot pedal, or other type of interlock to restrict movement.
9. If required by the equipment manufacturer, roll over protection structures shall be provided. Any modifications to lifting and hoisting equipment must be approved by the equipment manufacture.
10. Emergency egress routes must be kept clear at all times, including doors, corridors, work site, and staging areas.
11. No alarms, safety devices, etc. will be disabled without Laboratory approval.
12. The following lockout/tag-out procedures shall be enforced: Argonne personnel responsible for the equipment or utility will de-energize systems and initiate lockout/tag-out. Contractor personnel must be trained in lockout/tag-out prior to participating in lockout/tag-out of hazardous energy sources and working on lockout/tag-out systems or equipment. Contractors must verify that the energy source is de-energized before starting work on the system. Contractor employees must apply their lock and tags to energy control devices.
13. Fire watches shall be maintained during and for a minimum of thirty minutes after burning, welding, or other fire or spark generating work is completed as determined by the Laboratory Fire Inspector. An open flame permit must be issued by the Laboratory prior to any welding/cutting operations and it must be posted at the work site in a conspicuous area at all times and all restrictions followed. Open burning, fire barrels, or other open-flame heating devices having exposed fuel below the flame are prohibited. Flash back preventers are required on oxygen/fuel hoses. Spark arresters shall be provided on all smoke stacks permitting live sparks or hot material to escape.
14. A "multi-purpose" Class A-B-C dry chemical fire extinguisher, ten pound (minimum) with a pressure gauge and current inspection (within last 12 months), shall be on the construction site within 100 feet of the work area. An additional extinguisher is required for each open flame operation.
15. Contractors shall hold and document the following meetings:
    a. Weekly "Tool Box" meeting (5-15 minutes) for all contractor and subcontractor employees at the site to discuss pertinent safety topics.
    b. Meeting minutes or discussion topics must be posted on the contractor's bulletin board for a period of one month following the meeting. Minutes shall include the date, person holding the meeting, subject covered, and signatures of attendees.
16. The use of explosives is prohibited without written approval from the Laboratory.
17. Vehicle operators must have an appropriate valid driver's license when operating vehicles on site.
18. Portable metal ladders are prohibited.
19. The contractor's competent person performing the daily inspections required by OSHA, such as trench and excavation, and scaffold inspections, shall document each inspection. Such documentation shall be signed and include the date, time, and conditions found. Documentation shall be available for review by the Laboratory for the duration of the project.
20. The Laboratory has a scaffolding tagging system in place and therefore, will inspect for approval all scaffolds built by the contractor prior to use. No scaffolding shall be used without the Laboratory approval. The contractor must assign a trained and qualified scaffold competent person.
21. Respiratory Protection

    If workers are required to wear respirators, a written respiratory protection program must be included in the contractor's ES&H Program and Implementation Plan as follows:

    A written respiratory protection program must be submitted for approval prior to using a respiratory protection device, such as dust/mist masks, including those made of paper, half face air purifying respirators, full face air purifying respirators, or any atmosphere supplying respirator.
    a. Medical certification records must be submitted as required by 29 CFR 1910 and 1926. These records must contain the conclusions of a physician regarding the evaluation of the individual employee and consider the employee's physical and psychological ability to use respiratory protection equipment. The records must state whether the employee is able to wear air-purifying respirators, atmosphere supplying respirators, or both. The records must be signed by the evaluating physician and dated within one year of the date of the intended use of the respiratory protection equipment.
    b. Training records must be submitted which document that the employee was trained in and has mastered the training subjects in 29 CFR 1910.134. The records must be signed by the trainee and instructor and dated within one year of the date of the intended use of the respiratory protection equipment.
    c. Fit test records must be submitted that document the employee was fit tested by a competent fit tester with reliable testing equipment according to the testing requirement of 29 CFR 1910.134. The records must document which types (brands and part numbers or materials of construction and size of respirators) provided a satisfactory fit. The employee must be fitted with the respiratory equipment that will be used at the site. The records must be signed by the employee and the fit tester and dated within one year of the date of the intended use of the respiratory protection equipment.

L. Disciplinary Program

The contractor is required to develop and implement a disciplinary program to control poor performance, misconduct, negligence and safety violations by both its employees and that of any of its subcontractors. This program must be reflected in the contractor's ES&H Program and Implementation Plan. The contractor should have a plan similar to the one described below. The Laboratory will enforce the following Disciplinary Program, which includes disciplinary actions up to and including termination of the contract.

The Laboratory will issue verbal warnings to contractors and subcontractors for safety infractions and will issue documented safety violations (Notice of Safety Violation – PFS-530) for more serious or continual infractions. The following progressive program will be implemented in sequential stages based on the quantity of documented safety violations. The previous one year period from the current date will be utilized in determining the quantity of:

1. Stage 1 (Verbal Notification)

   When a contractor employee is observed to be involved in a safety infraction which is not imminent danger, the employee shall be told of the infraction and the contractor's ES&H representative will be notified of the incident.
2. Stage 2 (First Documented Safety Violation)

   After receiving verbal notification, if a contractor employee is observed to be involved in the same safety infraction, or an infraction which the employee should be cognizant of through his work qualifications, the contractor employee will receive a documented safety violation and the contractor's ES&H representative will receive a copy of the violation.
3. Stage 3 (Second Documented Safety Violation)

   Upon receipt of a second documented safety violation, notifications as stated in Stage 2 above shall be completed. In addition, the contractor shall contact the Laboratory to discuss the nature of the violations and the contractor's corrective actions needed to avoid repeated unsafe work practices and the consequences thereof.
4. Stage 4 (Third Documented Safety Violation)

   Upon receipt of a third documented safety violation, the contractor employee will be required to return his Argonne gate pass and Construction Safety Orientation card to the Laboratory, and the contractor employee's access to the Laboratory will be suspended for three working days. The contractor's management will be notified of this suspension by the Laboratory's Procurement office. Prior to returning to work at the Laboratory, the contractor employee will be required to attend the Contractor Safety Orientation. In addition, contractor management and the contractor employee may be required to attend a meeting with Laboratory representatives prior to the employee being permitted access to the Laboratory.
5. Stage 5 (Subsequent Safety Violations)

   A subsequent documented safety violation of any nature will be cause to suspend the contractor employee for two weeks. Additional safety violations will be cause for further suspension. Notification and conditions for granting return access to the Laboratory will be as described in Stage 4 above.
6. Imminent Danger

   Imminent danger situations include, but are not limited to, working at heights above six feet without fall protection; not locking out, tagging and verifying control of hazardous energy before working; not complying with confined space entry requirements; and entering a trench, excavation or space without control measures in place. When a contractor employee is observed to be involved in a situation which places him/her or others in imminent danger of being seriously injured or killed, progressive discipline will not be enacted. The employee will be suspended from working on the Laboratory site for a period of six months. In addition, the contractor's ES&H representative may be suspended from working on the Laboratory site for three work days. Conditions for granting return access to the Laboratory will be as described in Stage 4 above.
7. Contractor's Supervisor, Foreman, and/or ES&H Representatives

   The contractor's supervisor, foreman, and/or ES&H representative may receive a documented safety violation notice for failure to enforce safety program requirements. Any contractor's representative who receives a suspension of any kind will not be allowed to continue in the ES&H representative capacity until reinstated by the Laboratory. Any suspension invoked upon a contractor's supervisor, foreman, and/or ES&H representative will start on the day following the documented safety violation to allow the contractor time to arrange for a replacement, unless the violation involves imminent danger which warrants immediate removal from site. The contractor is responsible for submitting for approval, the name and qualifications of a replacement ES&H representative before work will continue. Once an ES&H representative's status has been terminated, it is at the discretion of the Laboratory to determine reinstatement.
8. Cost to the Laboratory

   If Laboratory disciplinary action results in suspension of contractor employee(s) including supervisors, foreman, and ES&H representative as discussed above, the contractor shall make no claim for an extension of time or for compensation for damages by reason of, or in connection with, this disciplinary action.
9. Bid List Removal and Disqualification

A contractor's ES&H performance will be an important factor for future consideration for bid lists and selection criteria. This will include a review by the Laboratory of the contractor's performance, misconduct, negligence, and safety violations by both its employees and that of any of its subcontractors. If it is determined by the Laboratory that the contractor has failed to implement its approved ES&H program and the contractor has shown negligence in enforcing ES&H compliance on the Laboratory site, the contractor will be removed from the active bid list of contractors and shall not be allowed to bid work or work as a subcontractor on the Laboratory site for a period of time as determined by the Laboratory. For example, two suspensions in one year and a poor safety record are grounds for disqualification (i.e., removal from active bidders list of contractors). The contractor may request reinstatement after a one year period. The contractor's request must be in writing and contain the company's corporate safety plan and an updated "Argonne National Laboratory Contractor Safety Information Questionnaire," PFS-525.

M. Drug-Free Workplace

It is the Laboratory's policy to maintain a drug-free workplace. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on the Laboratory site. Also, contractor employees are prohibited from consuming alcohol at the Laboratory. Contractor and subcontractor employees who violate this policy will be subject to disciplinary action, including discharge.

The contractor and all lower tier subcontractors shall abide by the Drug-Free Workplace Act of 1988. Anyone performing work under this contract will 1) abide by the terms of this policy; and 2) notify their employer of any drug statute convictions for a violation occurring in the workplace no later than five (5) days after such convictions. The contractor will notify the Laboratory within ten (10) days following receipt of the information from an affected employee. Failure to provide such notification shall be reason for immediate discipline up to and including barring the employee site access.

44. ENVIRONMENTAL PROTECTION (MAY 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.

45. LIMITATIONS PERIOD (MAY 2001)

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

46. ASSIGNMENT AND SUBCONTRACTING (OCT 1999)

(a) Neither this contract nor any interest therein nor any claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the Laboratory. The Laboratory may assign the whole or any part of this contract to the Government or its designee and in such event this contract shall continue in full force and effect.

(b) The contractor shall submit a written list of the names of all subcontractors who will perform any part of the work or supply any principal portions of the materials to the Laboratory within ten (10) days after the effective date of this contract or in any event prior to engaging subcontractors or ordering such materials. The Laboratory reserves the right to reject any subcontractor or supplier who is unable to demonstrate that he is qualified and experienced to perform the proposed portion of the work.

47. SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)

(a) Definitions. As used in this clause—
"Commercial item" has the meaning contained Federal Acquisition Regulation 2.101, Definitions.
"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)
(1) The Contractor shall insert the following clauses in subcontracts for commercial items:
(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds $5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
(iii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
(v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212(a));
(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).
(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).
(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.
(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

48. NON-WAIVER OF DEFAULTS (OCT 1999)

Any failure by the Laboratory at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this contract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, nor the right of the Laboratory at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

49. WARRANTY OF CONSTRUCTION (OCT 1999)

(a) In addition to any other warranties in this contract, the contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If the Laboratory takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Laboratory takes possession.

(c) The contractor shall remedy at the contractor's expense any failure to conform, or any defect. In addition, the contractor shall remedy at the contractor's expense any damage to Government-owned or Laboratory-controlled real or personal property, when that damage is the result of --
(1) The contractor's failure to conform to contract requirements; or
(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

(e) The Laboratory shall notify the contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Laboratory shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the contractor shall --
(1) Obtain all warranties that would be given in normal commercial practice;
(2) Require all warranties to be executed, in writing, for the benefit of the Laboratory, if directed by the Laboratory; and
(3) Enforce all warranties for the benefit of the Laboratory, if directed by the Laboratory.

(h) In the event the contractor's warranty under paragraph (b) of this clause has expired, the Laboratory may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the contractor or subcontractor or supplier at any tier, the contractor shall not be liable for the repair of any defects of material or design furnished by the Laboratory nor for the repair of any damage that results from any defect in Laboratory-furnished material or design.

(j) This warranty shall not limit the Laboratory's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

50. BONDS AND INSURANCE (OCT 1999)

(a) Definition. "Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Contracts exceeding $150,000 (Miller Act).
(1) Performance bonds. Unless the Laboratory Procurement Official determines that a lesser amount is adequate for the protection of the Laboratory, the penal amount of performance bonds must equal –
(i) 100 percent of the original contract price; and
(ii) If the contract price increases, an additional amount equal to 100 percent of the increase.
(2) Payment bonds.
(i) Unless the Laboratory Procurement Official makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—
(A) 100 percent of the original contract price; and
(B) If the contract price increases, an additional amount equal to 100 percent of the increase.
(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) Contracts exceeding $30,000 but not exceeding $150,000. Unless the Laboratory Procurement Official determines that a lesser amount is adequate for the protection of the Laboratory, the penal amount of the payment bond or the amount of alternative payment protection must equal—
(1) 100 percent of the original contract price; and
(2) If the contract price increases, an additional amount equal to 100 percent of the increase.

(d) If the contract price increases, the Laboratory may require additional protection by directing the contractor to—
(1) Increase the penal sum of the existing bond;
(2) Obtain an additional bond; or
(3) Furnish additional alternative payment protection.

(e) Reducing amounts. The Laboratory Procurement Official may reduce the amount of the security to support a bond, subject to the conditions of FAR 28.203-5(c) or 28.204(b).

(f) Before undertaking any work under this contract, the contractor shall, except as otherwise approved by the Laboratory, take out and maintain at its own cost and expense, until the work called for hereunder shall be completed and accepted by the Laboratory, the following insurance in companies satisfactory to the Laboratory:

LINE OF COVERAGE	LIMITS		
GENERAL LIABILITY ☒ Commercial General Liability ☐ Claims Made ☒ Occurring General Aggregate Limit Applies Per: ☒ Policy ☐ Project ☐ Log	EACH OCCURRENCE		$2,000,000
	Fire Damage Med Expense Personal & Adv Injury General Aggregate Products – COMP/OP AGG		$ 500,000 $ 50,000 $2,000,000 $2,000,000 $2,000,000
AUTOMOBILE LIABILITY ☒ Any Auto	COMBINED SINGLE LIMIT		$1,000,000
WORKMAN'S COMPENSATION AND EMPLOYMENT LIABILITY	WC STATUTORY LIMITS	OTHER	$500,000 $500,000 $500,000
	E.L. EACH ACCIDENT		
	E.L. DISEASE EA EMPLOYEE		
	E.L. DESEASE-POLICY LIMIT		

(g) All policies shall provide by appropriate language that UChicago Argonne, LLC, the University of Chicago and the United States Government are additional insureds, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution from other insurers of UChicago Argonne, LLC, the University of Chicago and the United States Government are waived.

(h) The contractor agrees to deliver to the Laboratory at the signing and delivery of the within contract, and in any event before any work is performed hereunder, certificates of the insurance companies as to the particulars of the insurance coverage above referred to, and such certificates shall contain a provision that such insurance will not be cancelled nor any change whatsoever made in the policies except upon not less than ten (10) days prior notice thereof to the Laboratory, mailed to it by registered mail, with postage prepaid, addressed to the Subcontract Administrator, Construction Contracts, Argonne National Laboratory, 9700 South Cass Avenue, Lemont, IL 60439.

(i) Before permitting any subcontractor to perform any work under this contract, the contractor shall require that such subcontractor furnish satisfactory evidence that it has taken out and maintains insurance in the same amounts and with the same provisions as required by the preceding paragraphs of this clause.

51. ADDITIONAL BOND SECURITY (OCT 1999)

The contractor shall promptly furnish additional security required to protect the Laboratory and persons supplying labor or materials under this contract if --

(a) Any surety upon any bond furnished with this contract becomes unacceptable to the Laboratory;
(b) Any surety fails to furnish reports on its financial condition as required by the Laboratory; or
(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Laboratory.

52. OTHER CONTRACTS (OCT 1999)

The Laboratory or the Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The contractor shall fully cooperate with the other contractors and with Laboratory or Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Laboratory. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Laboratory or Government employees.

53. BUY AMERICAN ACT—CONSTRUCTION MATERIALS (SEP 2010)

(a) Definitions. As used in this clause—
"Commercially available off-the-shelf (COTS) item"—
(1) Means any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.
"Component" means an article, material, or supply incorporated directly into a construction material.
"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a Subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.
"Cost of components" means—
(3) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
"Domestic construction material" means—
(1) An unmanufactured construction material mined or produced in the United States;
(2) A construction material manufactured in the United States, if—
(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
(ii) The construction material is a COTS item.
"Foreign construction material" means a construction material other than a domestic construction material.
"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference.
(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a) (2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b) (2) and (b) (3) of this clause.
(2) This requirement does not apply to information technology that is a commercial item or to the construction material or components listed by the Government as follows:
NONE
(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b) (2) of this clause if the Government determines that—
(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.
(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b) (3) of this clause shall include adequate information for Government evaluation of the request, including—
(A) A description of the foreign and domestic construction materials;
(B) Unit of measure;
(C) Quantity;
(D) Price;
(E) Time of delivery or availability;
(F) Location of the construction project;
(G) Name and address of the proposed supplier; and
(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b) (3) of this clause.
(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(a) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure
Item 1:	
Foreign construction material	_____
Domestic construction material	_____
Item 2:	_____
Foreign construction material	_____
Domestic construction material	

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if o
[Include other applicable supporting information.]
[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free e

54. GOVERNMENT/LABORATORY PROPERTY (OCT 1999)

(a) Laboratory-furnished property.
(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --
(i) All or substantially all of the Contractor's business;
(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
(iii) A separate and complete major industrial operation connected with performing this contract.
(2) The Laboratory shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Laboratory-furnished property described in the specifications or elsewhere in the contract, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Laboratory-furnished property").
(3) The delivery or performance dates for this contract are based upon the expectation that Laboratory-furnished property suitable for use will be delivered to the Contractor at the times stated in the contract or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
(4) If Laboratory-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Laboratory, detailing the facts, and, as directed by the Laboratory and at Laboratory expense, either effect repairs or modification or return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Laboratory shall make an equitable adjustment as provided in paragraph (h) of this clause.
(5) If Laboratory-furnished property is not delivered to the Contractor by the required time, or times, the Laboratory shall, upon the Contractor's timely written request, make a

determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Laboratory-furnished property.

(1) The Laboratory may, by written notice, (i) decrease the Laboratory-furnished property provided or to be provided under this contract, or (ii) substitute other Laboratory-furnished property for the property to be provided by the Laboratory, or to be acquired by the Contractor for the Laboratory, under this contract. The Contractor shall promptly take such action as the Laboratory may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Laboratory shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Laboratory has agreed in the contract to make such property available for performing this contract and there is any --

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) 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 as a direct item of cost under this contract, shall pass directly from the vendor to the Laboratory. The Laboratory reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Laboratory Procurement Official shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Laboratory upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Laboratory, whichever first occurs. Property furnished by the Laboratory and property purchased or furnished by the Contractor, title to which vests in the Laboratory, under this paragraph are hereinafter referred to as Laboratory property. Title to Laboratory property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Laboratory, nor shall such Laboratory property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) Identification.

To the extent directed by the Laboratory Procurement Official, the Contractor shall identify Laboratory property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Laboratory Procurement Official, as shall indicate its ownership by the Laboratory.

(e) Disposition.

The Contractor shall make such disposition of Laboratory property which has come into the possession or custody of the Contractor under this contract as the Laboratory Procurement Official may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Laboratory Procurement Official may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Laboratory Procurement Official and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Laboratory, as the Laboratory Procurement Official may direct. Upon completion of the work or termination of this contract, the Contractor shall render an accounting, as prescribed by the Laboratory Procurement Official, of all Laboratory property which had come into the possession or custody of the Contractor under this contract.

(f) Protection of Laboratory Property - 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 direction, in accordance with sound business practice, to safeguard and protect Laboratory 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 property management contained in the Federal Property Management Regulations (41 CFR Chapter 101), the Department of Energy Property Management Regulations (41 CFR Chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(g) Risk of loss of Laboratory property.

(1) (i) The Contractor shall not be liable for the loss or destruction of, or damage to, Laboratory 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 managerial personnel;

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Laboratory Procurement Official to safeguard such property under paragraph (e) of this clause; or

(C) Failure of Contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (j)(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 Laboratory 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 Laboratory for the loss, destruction, or damage.

(2) In the event the Contractor is determined liable for the loss, destruction, or damage to Laboratory property in accordance with (g)(1) of this clause, the Contractor's compensation to the Laboratory shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Laboratory Procurement Official shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Laboratory Procurement Official shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (g)(1) of this clause is not allowable.

(h) Steps to be taken in event of damage, destruction and loss.

In the event of any damage, destruction, or loss to Laboratory property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor:

(1) Shall immediately inform the Laboratory Procurement Official of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damage, destroyed, or lost property in accordance with the written direction of the Laboratory Procurement Official. The Contractor shall take no action prejudicial to the right of the Laboratory to recover therefore, and shall furnish to the Laboratory, on request, all reasonable assistance in obtaining recovery.

(i) Laboratory property for Laboratory use only.

Laboratory property shall be use only for the performance of this contract.

(j) Property Management.

(1) Property Management System.

(i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Laboratory property in its possession under the contract. The Contractor's property management system shall be submitted to the Laboratory Procurement Official for approval and maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the Laboratory Procurement Official may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Laboratory-owned property;

(C) Full integration with the Contractor's other administrative and financial systems; and

(D) Method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (j)(2) of this clause.

(2) Property Inventory.

(i) Unless otherwise directed by the Laboratory Procurement Official, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Laboratory property.

(ii) In the event that the Contractor is succeeding another Contractor(s) in the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

55. SUSPENSION OF WORK (OCT 1999)

(a) The Laboratory may order the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Laboratory determines appropriate for the convenience of the Laboratory.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Laboratory in the administration of this contract, or (2) by the Laboratory's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the contractor shall have notified the Laboratory in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

56. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government or the Laboratory. The Laboratory Procurement Representative will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Laboratory Procurement Representative will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Laboratory Procurement Representative will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Laboratory until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Laboratory Procurement Representative or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also

shall allow authorized representatives of the Laboratory Procurement Representative or Department of Labor to interview employees in the workplace during working hours.(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

57. DAVIS-BACON ACT (JULY 2005)

(a) Definition.—"Site of the work"—
(1) Means—
(i) *The primary site of the work*. The physical place or places where the construction called for in the contract will remain when work on it is completed; and
(ii) *The secondary site of the work, if any*. Any other site where a significant portion of the building or work is constructed, provided that such site is—
(A) Located in the United States; and
(B) Established specifically for the performance of the contract or project;
(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and
(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a) (1) (i) or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;
(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
(ii) The classification is utilized in the area by the construction industry.
(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program

58. DAVIS-BACON ACT – PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Laboratory will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of –

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;
(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

59. WITHHOLDING OF FUNDS (FEB 1988)

The Laboratory shall, upon its own action or upon written request of an authorized representative of the Department of Energy or the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Laboratory may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

60. PAYROLLS AND BASIC RECORDS (JUNE 2010)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at http://www.dol.gov/whd/forms/wh347.pdf. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.
(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representativesT of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

61. APPRENTICES AND TRAINEES (JULY 2005)

(a) Apprentices.
(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—
(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.
(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.
(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determinethat there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.
(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

62. COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

63. SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)

(a) Definition. "Construction, alteration or repair," as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
(2) Painting and decorating;
(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and
(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
(1) Davis-Bacon Act;
(2) Contract Work Hours and Safety Standards Act — Overtime Compensation (if the clause is included in this contract);
(3) Apprentices and Trainees;
(4) Payrolls and Basic Records;
(5) Compliance with Copeland Act Requirements;
(6) Withholding of Funds;
(7) Subcontracts (Labor Standards);
(8) Contract Termination – Debarment;
(9) Disputes Concerning Labor Standards;
(10) Compliance with Davis-Bacon and Related Act Regulations; and
(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d) (1) Within 14 days after award of the contract, the Contractor shall deliver to the Laboratory Procurement Representative a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Laboratory Procurement Representative an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

64. CONTRACT TERMINATION - DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

65. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

66. DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

67. CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code 18 U.S.C. 1001.

68. APPROVAL OF WAGE RATES (OCT 1999)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

69. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions
"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.
"Director," as used in this clause, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
"Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
"Minority," as used in this clause, means --
(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
(3) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); and
(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race).

(b) If the contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other

contractors or subcontractor toward a goal in an approved plan does not excuse any contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the contractor has a collective bargaining agreement, to refer minorities or women shall excuse the contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the contractor's employees are assigned to work. The contractor, if possible, will assign two or more women to each construction project. The contractor shall ensure the foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the contractor by the union or, if referred back, not employed by the contractor, this shall be documented in the file, along with whatever additional actions the contractor may have taken.

(4) Immediately notify the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred back to the contractor a minority or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the contractor's equal employment policy by --

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other contractors and subcontractors with which the contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment policy and affirmative action obligations.

(h) The contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the contractor --

(1) Actively participates in the group.

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.

(n) The contractor shall designate a responsible official to --

(1) Monitor all employment related activity to ensure that the contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Laboratory or the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

70. FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

(a) As used in this clause—

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

71. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer 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 Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

Alternate I (Sept 1996). If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Alternate II (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) of the basic clause.

Alternate III (Sept 1996). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (g) for paragraph (g) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

* * * * *

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

Alternate V (Sept 1996). If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:
- (1) If the termination is for the convenience of the Government, include—
  - (i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;
  - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;
  - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;
  - (iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
  - (v) The reasonable costs of settlement of the work terminated, including—
    - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- (2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit—
  - (i) Any amount for preparation of the Contractor's termination settlement proposal; and
  - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

* * * * *

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

72. DEFAULT (OCT 1999)

(a) If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Laboratory may, by written notice to the contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Laboratory may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the Laboratory resulting from the contractor's refusal or failure to complete the work within the specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Laboratory in completing the work.

(b) The contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause, if --
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and the subcontractors or suppliers; and
- (2) The contractor, within 10 days from the beginning of any delay (unless extended by the Laboratory), notifies the Laboratory in writing of the causes of delay. The Laboratory shall ascertain the facts and the extent of delay. If, in the judgment of the Laboratory, the findings of fact warrant such action, the time for completing work shall be extended.

(c) If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Laboratory.

(d) The rights and remedies of the Laboratory, in this clause are in addition to any other rights and remedies provided by law or under this contract.

73. ANTI-KICKBACK PROCEDURES (OCT 2010)

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

(a) Definitions.
- (1) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.
- (6) "Subcontract," 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.
- (7) "Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier Subcontractor.
- (8) "Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --
- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime Contractor or higher-tier Subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report, in writing, the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the prime Contractor withhold from sums owed a Subcontractor under the prime contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this Clause. In either case, the prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed $150,000.

74. RESTRICTION ON CERTAIN FOREIGN PURCHASES (JUN 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn/. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

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

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

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

76. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

77. COMBATING TRAFFICKING IN PERSONS (FEB 2009)

(a) Definitions. As used in this clause—

"Coercion" means—
- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

"Forced labor" means knowingly providing or obtaining the labor or services of a person—
- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—
(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
(2) The abuse or threatened abuse of the legal process.
"Severe forms of trafficking in persons" means—
(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or 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 labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—
(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
(2) Procure commercial sex acts during the period of performance of the contract; or
(3) Use forced labor in the performance of the contract.

(c) Contractor requirements. The Contractor shall—
(1) Notify its employees of—
(i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification. The Contractor shall inform the Contracting Officer immediately of—
(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—
(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
(2) Requiring the Contractor to terminate a subcontract;
(3) Suspension of contract payments;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
(6) Suspension or debarment.

(f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) Mitigating Factor. The Contracting Officer may consider whether the Contactor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/g/tip .

78. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

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

(a) Definitions. As used in this clause—
"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" and "tribal organization" 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 officer or 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 representative organization, and any other instrumentality of a local government.
"Officer or employee of an agency" includes the following individuals who are employed by an agency:
(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.
"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.
"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
"Recipient" includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.
"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
"State" means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.
(1) The term appropriated funds does not include profit or fee from a covered Federal action.
(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:
(1) Agency and legislative liaison by Contractor employees.
(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.
(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—
(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or
(B) The application or adaptation of the person's products or services for an agency's use.
(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
(2) Professional and technical services.
(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).
(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.
(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.
(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts.
(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.
(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures.

Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

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

79. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)

a. Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

b. Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.

c. Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

d. Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

e. Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

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

g. Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

h. Comptroller General.
   1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any employee regarding such transactions.
   2. This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
   3. Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

i. Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.
   1. Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe—
      i. The internal audit organization's placement within the contractor's organization and its reporting requirements;
      ii. The audit organization's size and the experience and educational standards of its staff;
      iii. The audit organization's relationship to the corporate entities of the Contractor;
      iv. The standards to be used in conducting the internal audits;
      v. The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
      vi. The intended use of external audit resources;
      vii. The plan for audit of subcontracts, both pre-award and post-award; and
      viii. The schedule for peer review of internal audits by other contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.
   2. By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the contractor's system of business, financial, or management controls.
   3. By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and contractor management systems described in the internal audit design.
   4. The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.

j. Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the contractor's management controls suspect, or the contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

80. LABORATORY SITE ACCESS AND /OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (DEC 2004)

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 (a minimum of 30 days for a sensitive assignment, 7 days for a non-sensitive country assignment or visit or sensitive visit.)

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 security plan is required to be submitted to the Foreign Visits and Assignments Office with 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, an indices check is valid for two years).

For visits or assignments involving a foreign national from a "Terrorist Supporting Country", (which currently include: Cuba, Iran, Libya, North Korea, Sudan, Syria), specific approval of the visit/assignment by the Secretary of Energy or his designees is required. This approval, if granted, may take up to one year after the internal approvals have been processed.

The time frames indicated above shall not constitute the basis for any 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 who 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.

81. 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 deemed exports which are any communication of technical data to a foreign national, whether it takes place in the United States or abroad. 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 observes 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 statutes and regulations. Unless authorized by appropriate government license or regulation, contractor agrees not to export directly or indirectly any technology, software or materials provided by the Laboratory. Contractor shall be solely liable for any violation of export control statutes or regulations, and shall indemnify and hold the Department of Energy, UChicago Argonne, LLC, and the Laboratory harmless from any liability that may arise for any such violation.

82. 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 employees undertake to further its research and technology development mission is excepted from U.S. export control regulations, the Laboratory must abide by all of the export control laws and regulations to ensure its compliance with export controls.

An export can occur through a variety of means, including oral communications, written documentation, or transfer of U.S. computer software to foreign nationals. Technology transfers to foreign nationals while they are visiting the United States or other countries or while you are visiting their country are considered exports. You and the Laboratory can be held liable for improperly transferring controlled technologies.

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

- Fundamental research and information resulting from fundamental research
- Published information and software (publicly available) education information
- Patent applications

If the information, technology, and/or commodities do not fall into one of these categories, please contact the Export Control Manager at Argonne to determine if a license is required prior to export.

To further ensure that you do not run the risk of exporting sensitive information or technology when traveling abroad, keep the following guidelines in mind that without having acquired an export license prior to your trip, presentations and discussions must be limited to only those topics that are not on the DOE Sensitive Subjects List and the Argonne Sensitive Technologies and not related to controlled items or technologies unless they are in the public domain. Further elaboration, or additional details, may be considered an export of technologies and need an export license prior to release.

83. VEHICLE LIABILITY INSURANCE COVERAGE (MAY 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.

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

(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 programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

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

(c) The Contractor is encouraged to—
   (1) Adopt and enforce policies that ban text messaging while driving—

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

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—
(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

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

85. INTEGRATION CLAUSE (MAY 2001)

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

86. TECHNICAL STANDARDS PROGRAM (FEB 2011)

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

1. In the performance of this contract, the Contractor, when participating in the development of Department of Energy (DOE) Technical Standards, conducting technical standards review activities, and selecting technical standards for use to support assigned DOE missions and functions, must:
2. Select, use, and adhere to appropriate voluntary consensus standards (VCSs), except where use of VCSs is inconsistent with law or impractical. (Note: VCSs are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international.)
3. Participate as appropriate in development and review of those DOE Technical Standards where the contractor has technical or programmatic interests, or will be affected by the content of DOE Technical Standards under development, or as directed by the Contracting Officer.
4. Designate and provide support for a coordinator for technical standards activities, including identification of the appropriate Subject Matter Experts to review draft DOE Technical Standards.
5. Report participation in VCS activities conducted in support of DOE missions and functions through the Laboratory Technical Standards Manager in The Office of Contract Administration (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.

87. 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 PART

HEADMARK LIST

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

Grade 5

Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK	MANUFACTURER
J	Jinn Her (TW)

MARK	MANUFACTURER
KS	Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK	MANUFACTURER
A	Asahi Mfg. (JP)
NF	Nippon Fasteners (JP)
H	Hinomoto Metal (JP)
M	Minamida Sieybo (JP)
MS	Minato Kogyo (JP)
Hollow Triangle	Infasco (CA TW JP YU) (Greater than 1/2 inch dia)
E	Daiei (JP)

MARK	MANUFACTURER
KS	Kosaka Kogyo (JP)
RT	Takai Ltd (JP)
FM	Fastener Co of Japan (JP)
KY	Kyoei Mfg (JP)
J	Jinn Her (TW)
UNY	Unytite (JP)

GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:

MARK	MANUFACTURER
KS	Kosaka Kogyo (JP)

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

Type 1

Type 2

Type 3

MARK	MANUFACTURER
A325 KS	Kosaka Kogyo (JP)

Headmarkings are usually raised – sometimes indented.

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

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

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

U. S. Department of Energy

Worker Protection for DOE Contractor Employees

Policy:

U.S. Department of Energy (DOE) contractor employees shall be provided with safe and healthful working conditions in accordance with the standards prescribed pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and the Department of Energy Reorganization Act of 1977; said standards shall be consistent with those promulgated under the Occupational Safety and Health Act of 1970, Public Law 91-596. Please refer to DOE O440.1A for details.

DOE Contractors:

DOE has determined that

Argonne National Laboratory

is subject to DOE Acquisition Regulation (DEAR), Subpart 970.23, and is, therefore, required to comply with applicable DOE –prescribed Occupational Safety and Health Administration (OSHA) standards listed therein. This Order and the standards are available for employee review at

Argonne Site Office

Building 201.

As delineated in DOE Order 440.1A, Attachment 2, Contractor Requirements Document, the DOE contractor is required to:

1. Implement a written worker protection program that provides a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.
2. Establish written policy, goals, and objectives for the worker protection program.
3. Use qualified worker protection staff to direct and manage the worker protection program.
4. Assign worker protection responsibilities, evaluate personnel performance, and hold personnel accountable for worker protection performance.
5. Encourage employee involvement in the development of program goals, objectives and performance measures and in the identification and control of hazards in the workplace.
6. Inform workers of their rights and responsibilities by appropriate means, including posting this poster in the workplace where it is accessible to all workers.
7. Identify existing and potential workplace hazards and evaluate the risk of associated worker injury or illness.
8. Implement a hazard prevention/ abatement process to ensure that all identified hazards are manager through final abatement or control. For existing hazards identified in the workplace, abatement actions prioritized according to risk to the worker shall be promptly implemented pending final abatement and workers shall be protected immediately from imminent danger conditions.
9. Provide workers, supervisors, managers, visitors and worker protection professionals with worker protection training.
10. Ensure that subcontractors performing work on DOE-owned or –leased facilities comply with these requirements and the contractor's own site worker protection standards (where applicable) .

Contractors are also required to comply with the Federal regulations and national standards listed in section 12 of Attachment 2 to DOE O 440.1A. In addition DOE O 440.1A contains requirements for the following specific functional areas, if the contractor is involved in these activities: construction safety, fire protection, firearms safety, explosives safety, industrial hygiene, occupational medical, pressure safety, motor vehicle safety, and suspect and counterfeit item controls. Please refer to DOE O 440.1A for details.

Employees:

DOE contractor employees have the right to:

1. accompany DOE worker protection personnel during workplace inspections;
2. participate in the activities provided for in DOE O 440.1A, Attachment 2, on official time;
3. express concerns related to worker protection;
4. decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to that individual, coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures established in accordance with the requirements herein;
5. have access to DOE worker protection publications, DOE-prescribed standards, and the organization's own worker protection standards or procedures applicable to the workplace;
6. observe monitoring or measuring of hazardous agents and have access to the results of exposure monitoring;
7. be notified when monitoring results indicate they were overexposed to hazardous materials; and
8. receive results of inspections and accident investigations upon request.

Inspections:

All activities under this contract are subject to inspection by DOE. When an inspection under DOE O 440.1A is conducted, a contractor management representative and a representative authorized by the employees will be given an opportunity to accompany the DOE inspector.

Where there is no representative authorized by the employees, the DOE inspector will consult with a reasonable number of employees concerning safety and health conditions in the workplace.

Concerns:

Employees or former employees may file a concern with the contractor management or with the local DOE office, as described in DOE O 442.1A . Concerns may be submitted either verbally or by calling the local DOE office employee concerns hotline, telephone **800-701-9966** , or in writing. An example report form is available adjacent to each hotline poster, or one may be obtained from the Employee Concerns Manager at the local DOE office.

Imminent Danger:

DOE Contractors are required to implement procedures to allow workers, through their supervisors, to stop work when they discover employee exposures to imminent danger conditions or other serious hazards. The procedure shall ensure that any stop work authority is exercised in a justifiable and responsible manner.

Nondiscrimination:

No contractor shall discharge or in any manner discriminate against any employee by virtue of the filing of a complaint, or in any other fashion, exercising on behalf of himself or herself or others any action set forth in DOE O 440.1A or DOE O 442.1A.

It is the policy of DOE that employees of contractors at DOE facilities should be able to provide information to DOE, to Congress, or to their contractors concerning violations of law, danger to health and safety, or matters involving mismanagement, gross waste of funds, or abuse of authority, to participate in proceedings conducted before Congress or pursuant to this part, and to refuse to engage in illegal or dangerous activities without fear of employer reprisal. Contractor employees who believe that they have been subject to such reprisal may submit their complaints to DOE for review and appropriate administrative remedy as provided in 10 CFR Part 708.

Inquiries:

Inquiries should be addressed to the contractor; however, additional inquiries may be addressed to the local DOE office:

Chicago Office
(DOE Office)

Attn: Employee Concerns Manager
9800 S. Cass Avenue
(P.O. Box or Street Address)
Lemont, IL 60439
(City, State and Zip Code)

Posting Requirements:

Copies of this notice must be posted in a sufficient number of places in Government-owned plants and facilities operated by DOE contractors subject to DOE Acquisition Regulation (DEAR), Subpart 970.23 and DOE O 440.1A, to permit employees working in or frequenting any portion of the plant to observe a copy on the way to or from their workplace.