**APPENDIX A**

**ARGONNE TERMS AND CONDITIONS**

(For Cost-Reimbursement Contracts)

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1. DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Applicability.

This clause applies to all contracts (except for commercial items) in excess of $500,000.

(b) Definition.

“Bona fide employee,” as used in this clause, means a person employed by an organization, who is actively engaged in its management or its corporate or other type of organization, and who is actively engaged in its management or its corporate or other type of organization.

(c) The Contractor shall provide information necessary to determine the applicability of this clause.

(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.

2. 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.

(c) “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.

3. EQUAL OPPORTUNITY (MAR 2007)

(a) Definition. “United States,” as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has closed, abandoned, nonconsensual Federal contracts 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.

(c) 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).

(d) 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 give 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 60.5-1.

(e) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are employed, without regard to their race, color, religion, sex, or national origin. This clause shall include, but not be limited to—

(i) Employment;

(ii) Upgrading;

(iii) Definitions;

(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 accessible to employees and applicants for employment the notices to be provided by the Contracting Officer that explain the implications of this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state the Contractor’s policy of providing equal employment opportunity in employment, without regard to their race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with whom the Contractor has collective bargaining agreement or contract, the notice to be provided by the Contracting Officer to explain the implications of this clause.

(6) The Contractor shall provide, in writing, a copy of the notice to each labor union or representative of workers with whom the Contractor does not have an established collective bargaining agreement or contract, and post copies of the notice in conspicuous places accessible to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 12112, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 12112, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EO-1), or any successor form, as prescribed in 41 CFR part 60-1. If the Contractor has filed within the 12 months preceding the date of the 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 certification.

(9) 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.

4. 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 new employees hired in any contractor’s activities (41 CFR 60-1.5).

(c) The Contractor shall prepare the report on 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 reported or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to report 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 Report. 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 60-4.1, 60-4.2, and 60-4.4) or certification of 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 include the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

5. 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—

(i) “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 less than 3 or more than 3 days duration, and part-time employment.

(ii) “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 a United States Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1293).

(iii) “Disabled veteran” means—

(A) 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

(B) A person who was discharged or released from active duty because of a service-connected disability.

(4) “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; or

(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.

(2) Any employee who has authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, or advancement of other employees are given particular weight.

(3) 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.

(4) “Other protected veteran” means a veteran who served on active duty in the U.S. military, ground, naval, or air service, and whose service included service in Vietnam or, for veterans of that period for whom a campaign badge has been authorized by the laws administered by the Department of Defense.

(5) “Persons 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 including any opening that the Contractor proposes to fill by “layoff” or similar method.

(6) “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.

(7) “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 employee or applicant, on their own behalf or through a labor organization, exercised rights under the NLRA, or is a member of, or supports, or is affiliated with an employee organization. The Contractor shall not discharge, expel from membership, discriminate against, harass, or otherwise discriminate in their favor, or cause discrimination against, an employee or applicant for employment. The Contractor shall post a notice, of such size and form as may be prescribed by the Secretary of Labor, at each of its places of business where employees covered by the NLRA perform contract-related activity, including all offices where employees covered by the NLRA perform contract-related activity, including all employers and unions, and it provides contact information to the National Labor Relations Board 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 (3).

(e) Subcontracts.

(3) If the Contractor is bound by a subcontract, the subcontract shall include the clause prescribed at 22.1803. An employee is not bound by a subcontract that is required to include the clause prescribed at 22.1803.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract delivery, it shall notify the Office of Federal Contract Compliance Programs, or its designee, of the fact; and

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify and does not use it at time of contract delivery, the Contractor shall provide the Office of Federal Contract Compliance Programs, or its designee, with the name and location of each hiring location in the State. As long as the Contractor complies with the terms of the subcontract, the Contractor is bound by the subcontract in the same manner as it is bound by the contract. The Secretary of Labor may advise the State agency when it is no longer bound by this contract clause.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds $100,000 and will be performed wholly or partly in any State or States, unless exempted by 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 application of Executive Order 13496 or this clause.

(3) The Contractor shall also 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 is bound by a subcontract, or is threatened with such an involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such agreement to protect the interests of the United States.

6. EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

A. Applies to:

(1) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (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) Is performed in the United States.

B. Definitions. As used in this clause—

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

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

(ii) Construction;

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

(iv) Does not include bulk cargo, as defined in paragraph 3 of the Shipping Act of 1944 (46 U.S.C. App. 1702) as such products, unless, when they are to be integrated into a system which is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except loose or Seaoscopes, 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 8, 1965, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.206. An employee is not bound by a subcontract that is required to include the clause prescribed at 22.206.

"Noncommercial services" means services that are not performed under a contract if the employee—

(i) Normally performs support work, such as indirect or overhead functions; and

(ii) Does not perform work that is subject to 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 services to or for a prime Contractor or another subcontractor.

"United States," as defined in 48 U.S.C. 101(8), 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—

(2) Obtain an E-Verify Certificate of Completion.

(3) Comply with the Enrollment and Verification requirements of 8 CFR 274a.1-7.

(4) Submit a Certificate of Completion.

(5) Provide an E-Verify Certificate of Completion when required by a Government Agency.


(1) Obtaining Copies of the Notice of Employee Rights

Executive Order 13496 provides employees the right to receive an Employee Rights Poster in Adobe Reader (.pdf) format, which can be downloaded from the link: https://www.dol.gov/esa/offices/olms/regs/compliance/EmployeeRightsPoster21x171 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 provide a copy of the notice without duplication, including:

• Notice of Employee Rights Under Federal Labor Laws - 11x17-inch one-page format

• Notice of Employee Rights Under Federal Labor Laws - 11x8.5-inch two-page format (PDF)
(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, such as bulletin boards, noticeboards, or other public areas where notices to employees and employees with disabilities are likely to be seen. The contractor shall give a copy of the posted notice to any known person with a disability who requests it in writing within 10 days of posting it.

9. 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 terms and conditions of employment.

(b) Affirmative Action

(1) If the contractor has a collective bargaining agreement or other contract understanding, that the contractor shall be provided by or through the Contracting Officer.

(2) If the contractor has no such agreement, it shall provide a copy of the Notice of Affirmative Action to the Secretary of Labor for approval, and it shall be provided by or through the Contracting Officer.

(3) The contractor shall notify each labor union representing 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 qualified individuals with physical or mental disabilities.

(c) Noncompliance.

If the contractor does not comply with the requirements of this clause, the contractor agrees to provide for appropriate procedures and actions to be taken against the contractor.

10. SECURITY (MAR 2013)

a. Responsibility. The contractor’s duty to protect all classified information, special nuclear material, and other DOE property.

b. Regulations.

(1) The contractor agrees to comply with all security regulations and contract requirements for DOE as incorporated into the contract.

(2) Definition of Classified Information.

(i) The term “Classified Information” means information that is required to be protected as Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure pursuant to Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.

(ii) Definition of Restricted Data. The term “Restricted Data” means data concerning design, development, manufacture, or utilization of atomic weapons, 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 material (including documents, materials, and special nuclear material) which are in the contractor’s possession in connection with the work under this contract.

(iii) Activities sponsored by the contractor, including social or recreational activities, and selection of individuals with physical or mental disabilities.

(iv) Rate of pay or any other terms and conditions of employment.

(v) Poster requirements.

(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, such as bulletin boards, noticeboards, or other public areas where notices to employees and employees with disabilities are likely to be seen. The contractor shall give a copy of the posted notice to any known person with a disability who requests it in writing within 10 days of posting it.

(3) The contractor agrees to provide for appropriate procedures and actions to be taken against the contractor.

(4) 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. All provisions regarding access authorizations are deemed testing designated positions in accordance with 10 CFR Part 707.
employees possessing access authorizations are subject to applicant, random or cause testing for use of illegal drugs. DOE will not process or enter into contract with any applicant who tests positive for illegal drugs. DOE will not request or enter into contact with any applicant who has been convicted of illegal drug possession or use or who has been convicted of a felony.

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 the individual in the position until an access authorization has been provided. If the individual is hired and placed in the position prior to receiving an access authorization, the unclassified employee may not be afforded access to classified or controlled 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 DOE Security Office, in writing, the following information concerning each unclassified applicant or unclassified 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 DOE policies, procedures, 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 procedures.

E. The results of the test for illegal drugs.

i. Criminal liability. It is understood that a failure to comply with 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. 1921 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://tool.doe.gov. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

vii. 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 require the Contractor to determine whether that change may be inconsistent with policy and/or the requirements presented on Standard Form (SF) 328. Certificate Pertaining to Foreign Interests, executed prior to award of this contract. In making this determination, the Contractor must determine whether changes in ownership 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.

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 material.

4. The Contracting Officer may terminate this contract for default if either of the Contractor fails to comply with the requirements in paragraphs (d) through (f). If the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance, or a termination for default is declared, the Contractor 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 notice to prospective applicants that, 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. DOE shall also conduct subsequent reinvestigations as 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 be required. A counterintelligence-scoped polygraph examination.

Flow down to subcontractors. The Contractor agrees to insert terms that conform substantially to the language of this clause, including all subparagraphs, into any nonexempt subcontract, including all subcontracts under, or otherwise adopted under the Air Act or Executive Order 11738.

vi. In order 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 lead paint and other hazardous materials, the Contractor shall, in the performance of this contract, take the necessary steps to comply with all regulations and guidelines issued to implement those acts before the award of this contract.

The term “product” does not include any energy-consuming or energy-related products that are exempt from the definition of “product” under section 114(b)(4).

2. 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—

(a) Delivered;
(b) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(c) Acquired by the Contractor for use by the Government; or
(d) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

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.

VII. About the Contractor.

1. The Contractor shall meet the requirements of paragraphs (a) through (d) of this section.

2. FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html

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

(a) Definition. As used in this clause—

“Energy-efficient product” means a product that—

(1) Meets the performance of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark; or
(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

“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 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 quality standards;
(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or DOE of another State or political subdivision of a State, or an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
15. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Laboratory Procurement Representative or designee, in writing, days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing 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 isootope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the materials on notice as to the hazards involved (CMR No. 900-0017).

* 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 proper personnel are notified to institute any necessary safety health precautions. See FAR 33.601.

(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 in writing that the Laboratory Procurement Representative 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) Contain 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.

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

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

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

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

[To be filled in by Laboratory Procurement Representative]

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

(a) Definitions. As used in this clause—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 United 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. 401(a)(1) and 401(b)(1).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 401(b)(1)) requires Federal departments and agencies shall transport privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage involved in the military movement of equipment, materials, and commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessels —

(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, credits, or guarantees the convertibility of foreign currencies;

(4) Furnished with advance of funds, loans, or guarantees made by or on behalf of the United States.

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

(1) The:  

Office of Cargo  
717 Seventh Street, SW  
Washington, DC 20590

(2) The Contractors Office of Cargo  
400 Seventh Street, SW  
Washington, DC 20590

Preference (MAR-580)  
SW Maritime Administration

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

(1) Within a week of the date of the load for shipments originating in the United States, or

(2) Within seven 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 discharge.

(E) Port of loading.

(F) Port of final discharge.

(G) Description of commodity.

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

(2) If charged (i.e., not on a free and furnished basis) the following:

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

(e) The:  

Office of Costs and Rates  
Maritime Administration

400 Seventh Street, SW  
Washington, DC 20590

Phone: 202-366-2324

19. APPLICABLE LAW (OCT 1999)

To the extent that Federal law does not exist and State law could become applicable to this contract, the law of Illinois shall apply.

20. SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011)

This clause does not apply to small business concerns

a. Definitions. As used in this clause—

"African 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, and the proof of rule of law issued for the purpose of satisfying indigent 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 as set forth in section 2.101 of the Federal Acquisition Regulation.

"Commercial item" means a subcontracting (including goals) that covers the Offeror’s fiscal year and 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.

"Eshih" is located at http://www.eshihs.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
b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate the subcontracting plan as if you were reading it naturally.

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

1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c).
2. Workshops, seminars, training, etc., and outreach, assistance, counseling, or other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and 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. Total dollars planned to be subcontracted for an individual contract plan; or
   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 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 awards a subcontract to one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the 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
   ii. Total dollars planned to be subcontracted to small business concerns (including ANCs 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;

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. Service-disabled veteran-owned small business concerns;
   iii. Veteran-owned small business concerns;
   iv. HUBZone small business concerns;

4. A description of the method used to develop the subcontracting goals in paragraph (b)(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), veteran's service organizations, the National Minority Purchasing Council (NMPC) Information Statement, the Department of Commerce 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 any source list to determine whether to solicit small, veteran-owned small business; service-disabled veteran-owned small business; veteran-owned small business; small disadvantaged business; or women-owned small business concerns. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and women-owned small business concerns).

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 by –
   i. Small business concerns;
   ii. Service-disabled veteran-owned small business concerns;
   iii. Veteran-owned small business concerns;
   iv. HUBZone small business concerns;
   v. Small disadvantaged business concerns (including ANCs 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, subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

9. Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracting agreements, and that the offeror will require all subcontractors (except small businesses, veteran-owned small business, service-disabled veteran-owned small business, and women-owned small business concerns) to adopt a plan similar to the plan that complies with the requirements of this clause.

10. Assurances that the offeror will complete the subcontracting plan.

i. Cooperate in any studies or surveys as may be required;
ii. Submit specific reports so that the Government may determine the extent of compliance by the offeror with the subcontracting goal;
iii. Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontracting Report (SSR) in accordance with the paragraph (i) of this clause which uses the Electronic Subcontracting Reporting System (eSRS) at https://eSRS.bpa.gov. A list of 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, small disadvantaged business concerns (including ANCs and Indian tribes that are not small businesses), small business, service-disabled veteran-owned small business, veteran-owned small business, service-disabled veteran-owned small business, and women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions.
iv. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, and women-owned small business concerns).

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

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

viii. Whether small business concerns were solicited and if not, why not;
ix. 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.

x. Monitoring performance to evaluate compliance with the program's requirements.

xi. 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.

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

xiii. Whether women-owned small business concerns were solicited and if not, why not;

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

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

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

xvii. Whether women-owned small business concerns were solicited and if not, why not;

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

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

xx. Whether women-owned small business concerns were solicited and if not, why not;

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

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

xxiii. Whether women-owned small business concerns were solicited and if not, why not;

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

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

xxvi. Whether women-owned small business concerns were solicited and if not, why not;

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

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

xxix. Whether women-owned small business concerns were solicited and if not, why not;

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

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

xxxiii. Whether women-owned small business concerns were solicited and if not, why not;

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

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

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

xxxvii. Whether women-owned small business concerns were solicited and if not, why not;

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

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

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

xli. Whether women-owned small business concerns were solicited and if not, why not;

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

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

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

xlv. Whether women-owned small business concerns were solicited and if not, why not;

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

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

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

xlix. Whether women-owned small business concerns were solicited and if not, why not;

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

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

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

lxii. Whether women-owned small business concerns were solicited and if not, why not;

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

lxiv. Whether small business concerns were solicited and if not, why not;
A master plan on a plant or division-wide basis that contains all the elements required by paragraph (c) 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;
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.

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 efforts for the Government contract. Once a 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 offeror continues to meet the definition of a commercial contractor. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(15) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. Commercial plans shall be submitted within 30 days after the end of the Government's fiscal year.

When a modification meets the criteria in paragraph (b) of this clause, the contractor's commercial plan shall continue to meet the definition of a commercial plan, and the subcontractor's certification of cost or pricing data shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the contractor'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.

The Contractor shall submit ISRs and SSRs using the web-based eSRS at http://www.esrs.gov.

C. If a prime Contractor and/or subcontractor is performing work for more than one executive agency, regardless of the dollar value of the subcontracts.

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 summary page which will identify the persons preparing the report and the persons approving the report.

iii. When a subcontracting plan contains separate goals for the basic contract and any modification (1) under paragraph (a) of this clause requires 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 and any factors applied and 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.

The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13 (a)(2), that the subcontractor's estimating process and any factors applied and 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.

A report is also required for each 30 days of contract performance. 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.

When a subcontracting plan contains separate goals for the basic contract and any modification (1) under paragraph (a) of this clause requires submission of certified cost or pricing data at FAR 15.403-4, the dollar goal entered 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.

The authority to approve or reject the ISR resides in:
A. The case of the prime Contractor, with the Contracting Officer; and
B. In the case of a subcontracting with a subcontracting plan, with the entity that awarded the contract.

Reports submitted under individual contract plans—
A. This report encompasses all subcontracting under prior contract plans and contracts with the awarding agency, regardless of the dollar value of the subcontract.
B. The report may be submitted on a corporate, company or subdivision (e.g., project office, site) level with 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, any subcontractor's estimating process and any factors applied and 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.

The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13 (a)(2), that the subcontractor's estimating process and any factors applied and 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.

The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13 (a)(2), that the subcontractor's estimating process and any factors applied and 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.

The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13 (a)(2), that the subcontractor's estimating process and any factors applied and 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.

The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13 (a)(2), that the subcontractor's estimating process and any factors applied and 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) Any reduction in the contract price under paragraph (b) of this clause due to defective certified cost or pricing data.

(1) If the Contracting Officer determines under paragraph (b) of this clause that a price reduction is warranted because of defective certified cost or pricing data, the price or cost shall be reduced:

(a) If the subcontractor was not in default or knew that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders). The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(b) Recovery of excessive pass-through charges. If the Contracting Officer determines that excessive pass-through charges exist:

(i) For other than fixed-price contracts, the excessive pass-through charges are unavailable in accordance with the provisions in FAR subpart 31.2; and

(ii) For applicable DoD fixed-price contracts, as identified in 15.908(b)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(f) Flowdown. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition thresholds under any acquisition category identified in Section 215 of the DoD Directive 52-215-2(a)(4) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

26. 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 15.403-2, except that this clause does not apply to any modification if an exception under FAR 52.215-4(c) applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this clause, is not allocable to a specific contract or subcontract, was certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, the Contractor shall be entitled to a price reduction.

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

28. CHANGE—COST REIMBURSEMENT (OCT 1999)

(a) The Laboratory may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Laboratory in accordance with the drawings, designs, and specifications.

(2) Method of shipment or packaging.

(3) Place of delivery.

(4) Description of services to be performed.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required to perform any part of the work, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Laboratory shall promptly notify the Contractor and the Contractor shall have no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(c) The change order 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.

(d) The Contracting Officer or subcontractor shall not submit a Certificate of Current Cost or Pricing Data.

(e) Except as prohibited by paragraph (d)(2)(i) of this clause, an offset in an amount determined appropriate by Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(1) The subcontractor was not in default or knew that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders). The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

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

This clause is applicable to all cost-reimbursement subcontracts that exceed the simplified acquisition threshold ($100,000).

(a) Definitions. As used in this clause—

“Added value” means that the Contractor performs subcontract management functions that are not required for, performance of any part of the work under this contract, whether or not required for, performance of any part of the work under any other contract.

“Excessive pass-through charge,” with respect to a Contractor or subcontractor that adds no or negligible value to the contract or subcontract, means a charge of $10,000 or less.

(1) Each item in the contract price that is attributable to the work performed under the contract (including task or delivery orders). The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer or authorized representative shall have the right to examine and audit all the Contractor’s records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(3) For applicable DoD fixed-price contracts, as identified in 15.908(b)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

Future modifications to this clause, if any, shall be inserted in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.908(b)(2)(ii)(B), in accordance with FAR 15.403-4.

9
(a) Definitions. As used in this clause—

"Contractor's managerial personnel" means any of the Contractor's directors, officers, managers, or department heads or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at a plant or separate location where the work is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

"Supplies" includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

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

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

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

(e) Unless otherwise specified in the contract, the Laboratory shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or other such time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Laboratory may require the Contractor to replace or correct any supplies that are not performed at time of delivery. Supplies are not performed when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (j) of this clause, the cost of the replaced or corrected supplies shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the corrective action taken.

(g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Laboratory may—

(1) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;

(2) Require delivery of undelivered supplies at an equitable reduction in any fixed fee payable under the contract; or

(3) Terminate the contract for default.

(h) Notwithstanding paragraphs (f) and (g) of this clause, the Laboratory may at any time require the Contractor to correct or replace, without cost to the Laboratory, nonconforming supplies, if the nonconformances are due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is misusing the Government's funds.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies already delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government furnished property shall be governed by the clause pertaining to Government property.

33. ASSIGNMENT (OCT 1999)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as authorized in this clause. The Laboratory may assign the whole or any part of this contract to the Government or its designee. The Contractor shall give the Laboratory Procurement Official written notice of any assignment of revenue from any of the Contractor's performance under this contract for which the Contractor will receive a fee or share.

(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 to subsidiaries or affiliates of the Contractor 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 supplied under this contract.

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


(4) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13149), if flow down is required in accordance with paragraph (h) of FAR clause 52.222-40.

(5) 52.222-36, Utilization of Small Business Concerns (Dec 2015) (15 U.S.C. 637(a)), if the subcontract is awarded to small business concerns.

(6) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(7) 52.222-55, Controlling Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).


(10) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13149), if flow down is required in accordance with paragraph (h) of FAR clause 52.222-40.

(11) 52.222-55, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).


While not required, the Contractor may flow down to subcontractors 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.
Title to Government property.

(A) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a part of the Contractor's property by reason of being attached to any real property.

(b) Fixed-price contracts.

(i) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (b), is exempt from subject to the provisions of this clause.

(ii) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price contracts, the absence of financing provisions or other specific requirements for title in the contract, the Contractor retains title to all property purchased by the Contractor for use in the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, the Government will accept the property in the contract through a contract modification listing the item as Government-furnished property.

(f) Contractor plans and systems.

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

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

(ii) Receipt of Property. The Government shall receive property (document the receipt). The transaction information necessary to meet the record keeping requirements of paragraph (f)(3)(i) shall be included in the documents, consistent with paragraph (f)(3)(i) of this clause, identifying as Government-owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any property acquisition database under the control of the Program Management Office.

(A) Government-furnished property. The Contractor shall furnish a written identification of each Property Administration property to the Government, identifying the relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are identified upon receipt of Government property.

(B) Contractor-furnished property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, shipment of Contractor-furnished property to a vendor, supplier, or sub-contractor, as to ensure the proper allocability and availability of associated costs.

(3) Records of Government Property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-furnished property.
(2) Records of Government property shall be readily available to authorized Government personnel.
(3) If determined by the Contractor that the Contractor’s (or subcontractor’s) property management practices are not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan acceptable to the Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.
(4) The Contractor shall ensure Government property located at subcontractor premises, and all Government property located at Government property.

(q) Systems analysis.
(1) The Contractor shall have access to the Contractor’s premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor’s property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor’s consent, all subcontractor premises.

(2) Property records shall enable a complete, current, audible record of all transactions and shall, unless otherwise provided for by the Property Administrator, contain the following:
(1) The name or description, manufacturer, model number, and National Stock Number if not provided for an additional item identification tracking and/or description.
(2) Quantity received (or furnished), receipted, and balance-on-hand.
(3) Unit acquisition cost.
(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
(5) Unit of measure.
(6) Accountable contract number or equivalent code designation.
(7) Location.
(8) Disposition.
(9) Posting reference and date of transaction.
(10) Date placed in service.

Use of a Receipt and Issue System for Government Material (a) When approved by the Property Administrator, the Contractor shall periodically prepare, record, and disclose physical inventory results. A physical final inventory shall be performed upon acquisition, completion, or disposal of the property. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor’s system or the property is to be transferred to the following contract).

Subcontractor control
(a) The Contractor shall award subcontract agreements that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, theft, damage or destruction of Government property).
(b) The Contractor shall assume its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor’s property management system.

Report
(a) The Contractor shall have a process to create and provide reports of discrepancies, loss, theft, damage, or destruction data, and shall periodically provide reports directed by the Property Administrator.

The Contractor’s maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance tasks. Significant item failures that are generated from inventory adjustments of material as determined by the Property Administrator or, a Property Administrator granted relief of responsibility for loss, theft, damage or destruction of Government property.

Delivered or shipped from the Contractor’s plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor.

A statement indicating current or future need.

A statement indicating current or future need.

A statement that indicates that the property was not or will not be reimbursed or compensated.

Copies of all supporting documentation.

Last known location of the property.

A statement that the property did not or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

Relief of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is:

Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including salvageable or reworkable property.

A statement indicating current or future need.

A statement indicating current or future need.

A statement indicating current or future need.

A statement that indicates that the property was not or will not be reimbursed or compensated.

Utilizing Government property
(a) The Contractor shall utilize, consume, move, and store Government property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
(b) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall promptly disclose and report property that is excess to contract performance.

Maintenance. The Contractor shall promptly disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

Properly disposed of in accordance with paragraphs (j) and (k) of this clause.

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(b) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall promptly disclose and report property that is excess to contract performance.

Maintenance. The Contractor shall promptly disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

Properly disposed of in accordance with paragraphs (j) and (k) of this clause.
under this paragraph within 10 days following the end of the calendar quarter during which it was required by the掳 under this paragraph is subject to civil rights legislation, 42 U.S.C. 2000e. Before title is vested and by signing this contract, the Contractor shall execute a statement in the following form: "No person in the United States or its outlying areas shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this contemplated financial assistance (title to property)."

36. KEY PERSONNEL (DEC 2000)

a. The personnel listed in Clause 39, Key Personnel, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:
(1) Notify the Laboratory Procurement Official in advance in writing; and
(2) Submit a justification, including proposed substitutions, sufficient in detail to permit evaluation of the impact on this contract.

Notwithstanding the foregoing, if the Contractor deems immediate removal or substitution of any of its key personnel is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity, the Contractor may remove or suspend such person at once, although the Contractor must notify the Laboratory Procurement Official in writing within 10 days after such action.

b. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

37. 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. The contractor or subcontractor is liable for liquidated damages at the rate of 25% of the basic rate of pay 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 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 liability under paragraph (b) of this clause. The Laboratory Procurement Representative will allow authorized representatives of the Contractor and subcontractor who are liable for unpaid wages or liquidated damages to make on the contractor's behalf, from funds withheld by the Laboratory, any payment to employees and to use such funds to satisfy liability under the 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 period 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 numbers, hours and rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not be in any particular form, as long as they record work by Department of Labor regulations at 29 CFR 5.1(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 shall also 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 withhold 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 the Contractor to pay rates of wages and overtime compensation as required by the Act.

38. WILSHIRE-HALEY PUBLIC CONTRACTS ACT (OCT 2010)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in the performance of which it is not customary to distribute supply prices for line items, the Contractor shall distribute supply prices for line items that do not exceed $150,000 and may vary substantially from the Wilshire-Haley Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable ratings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

39. INTEGRITY OF UNIT PRICES (OCT 2010)

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

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' costs within contracts on a basis that ensures that unit prices are in proportion to the items' costs.

(b) The proposals submitted by subcontractors for other than basic units of measure shall be based on the unit prices for the subcontractor's basic unit of measure and shall be in proportion to the basic unit of measure.

Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(c) When requested by the Laboratory, the Contractor shall provide any information relating to the Contractor's unit prices that is not required by the Laboratory, the Contractor shall provide any information relating to the Contractor's unit prices that is not required by the Laboratory.

(d) The Contractor shall submit with each supply order or invoice for supplies that do not exceed $150,000, a statement of the unit prices for each item of supplies that will not be subcontracted or that will be subcontracted to other than basic units of measure.

(e) The Contractor shall submit a statement of the unit prices for each item of supplies that will be subcontracted to other than basic units of measure with each supply order or invoice for supplies that do not exceed $150,000.

40. WARRANTY OF SERVICES (MAY 2001)

(a) Definition. "Acceptance," as used in this clause, means the act of an authorized representative of the Laboratory in communicating to the Contractor, for or on behalf of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the work, and is evidence of transfer of the service to the Laboratory.

(b) Notwithstanding the acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract, at the time of acceptance in writing, or at the time of completion and as required by the requirements of this contract. The Laboratory Procurement Office shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date of acceptance by the Laboratory. This notice shall state either—

(1) That the Contractor shall correct or perform any defective or nonconforming services; or
(2) That the Laboratory does not require correction or reperformance.

(iii) The contractor is required to correct or reperform. It shall be at no cost to the Laboratory, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as if originally issued. If the Contractor fails or refuses to correct or reperform, the Laboratory Procurement Official may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Laboratory thereby, or make an equitable adjustment in the contract price.

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

41. WARRANTY OF SUPPLIES (DEC 2011)

(a)

(b)

(c)

(d)

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(h)

(i)

(j)

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(v)

(w)

(x)

(y)

(z)
(9) Use its best efforts to sell, as directed or authorized by the Laboratory Procurement Official, any property of values, or things referred to in paragraph (c)(6) of this clause, unless the Contractor has failed to timely act or has failed to timely act in accordance with the Laboratory Procurement Official's instructions in paragraph (f)(2) of this clause, except that if the Contractor failed to timely act under the paragraph (f)(2) of this clause, then the Laboratory Procurement Official shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment," the Contractor shall not enter into any agreement excluding items authorized for disposition by the Laboratory Procurement Official. The Contractor may request the Laboratory to remove those items or enter into an agreement for their sale. Within 15 days, the Laboratory shall either permit the Contractor to remove those items or enter into a storage agreement. The Laboratory Procurement Official may verify the list submitted by the contractor or enter into such an agreement, and any adjustments arising from the expiration of the list shall be corrected, as necessary, before final settlement.

(b) The Contractor may, under the terms and conditions it prescribes, make partial, final, or any, settlement or final settlement proposal because of retention or other disposition of the contractor's fee in accordance with the Federal Acquisition Regulation. The Contractor shall be responsible for ensuring that the amount proposed to the Laboratory Procurement Official is reasonable and consistent with the applicable Federal Acquisition Regulation. The contractor shall correct the list, as necessary, before final settlement.

(c) All costs reimbursable under this contract, not previously paid, for the performance of the work shall be paid by the Laboratory after final settlement, unless the Contractor has paid similarly to the Government. The contractor shall repay the excess to the Laboratory upon demand, together with interest on the amount of the kickback. The Contractor may incorporate the substance of this clause, including this paragraph (c), and a clause or a paragraph (c) in any other subcontract or cooperative agreement. The Contractor may request the Laboratory to remove those items or enter into an agreement for their sale within 15 days. The Laboratory shall either permit the Contractor to remove those items or enter into a storage agreement. The Contractor may verify the list submitted by the contractor or enter into such an agreement, and any adjustments arising from the expiration of the list shall be corrected, as necessary, before final settlement.

(d) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect any prohibited acts, as defined in paragraph (b) of this clause in its operations and direct business relationships.

(e) The Contractor shall cooperate fully with any Federal agency investigating a possible violation of the provisions of this clause.

(f) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the contractor to the Government; (ii) require the contractor to return any kickback or (iii) require the contractor to return 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 contractor has already offset those monies under subdivision (c)(4)(i) of this clause.

(g) In extraordinary circumstances, the contractor may notify the Contracting Officer when the monies are withheld.

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

**47. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2008) – 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 an effect of relaxing or withdrawing any restrictions on subcontracts 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 Contractor shall incorporate the substance of this clause, including paragraph (a), in any subcontract or cooperative agreement 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 items.

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

**48. NEGOTIATED OVERHEAD RATES (AUG 2001)**

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be applied by negotiating a lump sum rate with the Government that is not subject to the applicable Federal Acquisition Regulation.

(b) The contractor, as soon as possible but not later than ninety (90) days after the expiration of his most recently completed quarter, or such other period as may be specified in the contract, shall submit to the Laboratory, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the contractor's actual cost experience during that period, together with supporting cost data. Negotiations of overhead rates by the contractor and the Laboratory shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

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

**49. 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) 3.001

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. Engaging into any cooperative agreement.

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

(b) Prohibitions. As used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(c) Impropriety. (1) "Impropriety," as used in this clause, means a person who has entered into a contract with the United States.

(2) "Impropriety," as used in this clause, means a person who has entered into any contract or subcontract with the United States.

(3) "Impropriety," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(d) Compliance. (1) "Compliance," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(2) "Compliance," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(3) "Compliance," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(e) Violation. (1) "Violation," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(2) "Violation," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(3) "Violation," as used in this clause, means a person who has entered into a contract or subcontract with the United States.

(f) Effect. Any person who violates any of the provisions of this clause shall not be eligible to receive any award or grant or loan from the United States.
“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 Alaska 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 agent of a Federal contract, grant, loan, or 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 as having governmental duties and powers, including (i) a local public authority, a special district, an interdistrict council of governments, a sponsor group representative organization, and any other instrumentality of a local government having governmental duties and powers.

“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 (10), Title 37, United States Code.
3. An individual who is a 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 any agency, but only with respect to activities 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 by an agency:

1. To the extent the Contractor can demonstrate that the Contractor has sufficient resources to pay such officer or employee for work that is not furnished by an agency.
2. To the extent the Contractor can demonstrate that the Contractor has sufficient resources to pay such officer or employee for work that is not furnished to an agency and the Contractor is not in violation of any other applicable Federal law.

“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 a 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, or loans from any agency, but only with respect to activities by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

1. “Reasonably employed” means, with respect to a regular employee or officer of a State, a reasonable employee or officer of a State requesting or receiving a Federal contract, an officer or employee who is employed by such person for an average of less than 130 working days within 1 year immediately preceding the date of the submission of the State’s certification 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 of the State’s certification that initiates agency consideration of such person for receipt of such contract, shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

2. “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 a multi-State, regional, or interstate entity having governmental duties and powers.

(1) When and to the extent that the amount allotted by the Laboratory to the contract is increased, any costs the contractor incurs before the increase that are in excess of any costs previously charged to the contract shall be treated as incurred under the terms of the contract before the increase.

(2) The contractor is not obligated to continue performance under this contract (including the preparation, submission, or negotiation of any bid, proposal, or application for the contract or for any additional funds) unless it agrees in writing to continue performance after the increase.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.
Official issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

The Laboratory will make payments to the Contractor when requested as work is performed, subject to a 90-day holdback. All such payments will be subject to the terms and conditions of the Schedule and the terms of the contract. The Contractor shall notify the authorized Laboratory Procurement Officer in writing whenever it has reason to believe that:

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

(b) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are final payments under the terms of this contract.

52. ALLOWABLE COST AND PAYMENT (JUN 2011)

(a) Invoicing.

(1) The Laboratory will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every work week, in amounts determined to be allowable by the Laboratory Procurement Officer in accordance with Federal Acquisition Regulations (FAR) Subpart 31.7 and supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of the contract. The Contractor may submit to an authorized representative of the Laboratory Procurement Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.242-5.

(b) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper payment request. In no event that the Laboratory requires an advance of contract financing, the Contractor shall submit a request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(c) Reimbursing costs.

(1) Costs that are reimbursable allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions—

(a) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(i) As soon as practicable after the submission of the Contractor's invoice;

(ii) Ordinarily within 30 days of the submission of the Contractor's invoice; and

(2) The costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract.

(B) Materials issued from the Contractor’s inventory and placed in the production process for use on the contract.

(C) Direct labor.

(D) Direct travel.

(E) Other direct in-house costs; and

(F) Properly allowable and allowable indirect costs, as shown in the statement of allowable costs which is to be attached to the contractor's reimbursement request for purposes of obtaining reimbursement under Government contracts; and

(G) The amounts of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be included as allowable costs.

(i) The Contractor's practice is to make contributions to the retirement fund at the end of each pay period as required by law.

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid as of the close of the pay period for any reason is considered as paid by the Contractor).

(iii) The Laboratory shall discontinue reimbursing the Contractor for any costs in excess of the estimated cost specified in the Schedule.

(j) Notwithstanding any audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this clause shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(k) Any statements or specifications in other documents incorporated in this contract by reference describing performance of service or furnishing of materials at the Contractor's expense or no cost to the Government shall be disregarded for purposes of cost reimbursement under this clause.

2. Small Business concerns. A small business concern may receive more frequent payments than every 2 weeks.

3. Indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Supplement G to the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms and conditions of the contract.

(2) The Contractor shall submit an adequate final indirect cost rate proposal to the Laboratory Procurement Officer and auditor within the 6-month period following expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Laboratory Procurement Officer.

(k) The Laboratory shall discontinue reimbursing the Contractor for any costs in excess of the estimated cost specified in the Schedule.

(l) The Laboratory is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the Laboratory’s share of the estimated cost specified in the Schedule.

(m) The contractor agrees to use its best efforts to perform the work specified in the Schedule and all materials under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Laboratory’s and the contractor’s share of the costs.

(n) The contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

51. LIMITATION OF COST (APR 1984)

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

(b) The contractor agrees to use its best efforts to perform the work specified in the Schedule and all materials under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Laboratory’s and the contractor’s share of the costs.

(c) The contractor shall notify the authorized Laboratory Procurement Officer in writing whenever it has reason to believe that:

(1) The costs the contractor expects to incur under this contract in the next 60 days, whenever it has reason to believe that:

(1) The Laboratory is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Laboratory specified in the Schedule; and

(2) The contractor is not obligated to contract for expenditure under this contract (incurred under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Authorized Laboratory Procurement Officer (i) notifies the contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(1) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Authorized Laboratory Procurement Officer, shall affect this contractor's estimated cost to the Laboratory. In the absence of the specified notice, the Laboratory is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Laboratory specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

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

(3) Change orders shall not be considered an authorization to exceed the estimated cost to the Laboratory specified in the Schedule, unless they contain a statement increasing the estimated cost.

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

(j) For the purpose of reimbursing allowable costs (except as provided in paragraph (k) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions—

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) General and Administrative expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(C) Overhead expenses (final indirect cost pool). Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pool.

(D) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(E) Facilities, purchased cost of money factors computation.

(F) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.

(G) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(H) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(I) Subcontract information. Listing of subcontracts awarded to contractors with the contractor being the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(J) Summary of each time-and-materials and labor-hour contract information, including labor categories; labor rates; hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(K) Description of total payroll per IRS form 941 to total labor costs distribution.

(L) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(M) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs and Allowable Charges).

(N) Contract closing information for contracts physically completed in this fiscal year (including contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(2) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect cost pools detailed by account to prior fiscal year and budgetary data.

(B) General Organizational information and Executive compensation for the five most highly compensated executives (see FAR Subpart 31.301-3).

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) List of accounting system (includes contractors required to submit a CAS Disclosure Statement or contractors where the designated system is the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the indirect costs billed (except to the extent the procedures have not changed from the previous year's submission).

(F) Certified financial statements and other financial data (e.g., trial balance, compilation, review, etc.).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (c) of this section.

(I) List of all internal audit reports issued since the latest disclosure of internal audit reports to the Contractor.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination Claims submitted which contain costs relating to the subject fiscal year.
(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the bills on all contracts to reflect the final indirect costs rates applied for the current fiscal year and any other indirect costs claimed and billed, as required in paragraph (d)(3)(ii)(V) of this section, within 60 days after the final indirect cost rates are established.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify: (i) the final indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items Institutional, Facilities, Administrative, and other expenses) to be reimbursable, and (v) any special provisions relating to the contract and/or subcontract, identifying any advances or agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation or contract termination for non-performance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the Government to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Laboratory Procurement Official after settlement of the final indirect cost rates for all years of a physically complete contract, the Contractor shall submit a complete invoice or voucher to the Government for the final indirect cost rates, with supporting documentation. The invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the Laboratory Procurement Official upon request.

(i) If the Contractor fails to submit a complete invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Laboratory Procurement Official may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Laboratory Procurement Official in accordance with paragraph (c) of this clause.

(e) Billing rates. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor for all allowable costs, as established by the Laboratory Procurement Official or by an authorized representative (the cognizant auditor), subject to adjustment when final rates are approved. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retrospectively revised by mutual agreement, at either party's discretion, to prevent substantial overpayment or underpayment.

(f) Quick-closure procedures. Quick-closure procedures are applicable when the conditions described in Section 7.6(b) of DOE-STD-1604, as applicable, are met.

(g) Audit. At any time or times before final payment, the Laboratory Procurement Official may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be:

(1) Reduced by amounts found by the Laboratory Procurement Official not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Upon approval of a complete invoice or voucher submitted by the Contractor in accordance with paragraph (d)(1) of this clause, and upon the Contractor's compliance with all applicable terms of the contract, the Government shall pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest) if any amount recovered by the Government is due to the Contractor under this contract, to the extent that those amounts are properly allocable to costs for which the Government has paid. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Laboratory Procurement Official. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Laboratory Procurement Official, of refunds, rebates, credits, or other amounts (including interest), if any, properly allocable to costs for which the Government has paid, for which the Contractor has been reimbursed by the Government under this contract,

(ii) A release, discharge, indemnity, and assignment by the Contractor of all liabilities, obligations, and claims arising out of or under this contract, except law.

(3) (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to the extent that the claims are not known to the Contractor under this contract, to the extent that those amounts are properly allocable to costs for which the Government has paid, Reasonable expenses incurred by the Contractor for settling subcontractor amounts, rates and other amounts (including interest, if any) recoverable by the Government from the Contractor under this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause 970.52-204. The Government or any authorized representative of the Government may have access to and the right to examine any of the Contractor's or subcontractor's records, books and documents, financial and cost reports, and other reports concerning the work under this contract or any other contract or 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 books and records at such time and in such manner as it shall deem appropriate.

(4) The Contractor shall, at any time, promptly provide the Government with all information and other assistance necessary to permit the Government to perform any internal audit or other audit under this contract.

(h) The Contractor shall, at any time, promptly provide the Government with all information and other assistance necessary to permit the Government to perform any internal audit or other audit under this contract.

53. BANKRUPTCY (JUL 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contract shall continue in force and effect to the extent consistent with law.

The internal audit organization's role and responsibilities to the Laboratory Procurement Official for administering the contract. This notification must be provided within five (5) days after the contractor has received the bankruptcy petition 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 which the Contractor is responsible when the contract has not been marked. This obligation remains in effect until final payment under this contract.

54. 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 by OFAC’s implementing regulations, specifically prohibits or suspends the use, sale, supply, or provision of such supplies and services to any person by reason of that person acting in a foreign state to which a national of the United States is subject to jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are subject to economic sanctions. These supplies and services are subject to corresponding economic sanctions. OFAC may take action to enforce these sanctions. The OFAC website contains information about these sanctions. Changes in OFAC’s policies may be found at www.treas.gov/office/enu/sanctions/cuba.html.

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

55. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest areas and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other facilities or dressing rooms, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by ethnic, religious, 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 that are segregated by race, religion, or national origin because of written or oral policies or employee custom. The contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause of 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.

56. 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 included; collecting and accounting for all work performed under the contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the recognition of and disposition of all other property costs connected with the possession of the USG (the United States) or property costs connected with 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 designee in accordance with the provisions of Clause 970.52-204. 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 subcontractor (including independent purchase order work) upon whom, 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 books and records at such time and in such manner as it shall deem appropriate.

(d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and technical cost reports, records of account and supporting documents, system files, data bases, and other evidence showing and supporting all allowable costs, collecting all amounts due the Government under this contract, including provisions of Clause 970.52-204, 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 other amounts disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Recordkeeping. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs included; collecting and accounting for all work performed under the contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the recognition of and disposition of all other property costs connected with the possession of the USG (the United States) or property costs connected with 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.

(f) The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause of this contract.

57. EQUAL OPPORTUNITY (JUN 2011)

(a) 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 records to the extent necessary to determine the validity of the claims and whether the cost of any subcontract is allowable.

(b) The Contractor shall, at any time, promptly provide the Government with all information and other assistance necessary to permit the Government to perform any internal audit or other audit under this contract.

(c) The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause of this contract.
57. ACCESS TO AND OWNERSHIP OF RECORDS (JUL 2005)

(a) Laboratory-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Laboratory and shall be under the control and ownership of the Laboratory or otherwise disposed of by the contractor either as the Laboratory Procurement Representative may from time to time during the progress of the work, in order to protect the Laboratory or the contractor. The Laboratory Procurement Representative shall direct upon completion or termination of the contract.

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of this clause: (i) records described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), (ii) records described at the Laboratory's or site's record retention schedules, if, upon termination or completion of the contract, the records are owned by the Laboratory or contractor. In addition, the contractor shall deliver such records to a location specified by 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 debared, suspended, or proposed for debarring by the Federal Government.

(c) Contractor shall require each proposed subcontractor whose subcontract will exceed $300,000, 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 parent company, is or is not debared, suspended, or proposed for debarring 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 debared, suspended, or proposed for debarring by the Federal Government. Where such records are available for examination by the Government, or for information on the Excluded Parties List System, the notice must include the following:

(i) The name of the subcontractor.

(ii) The contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(e) The competencies of conducting business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(f) Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract).

58. 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 798. The contractor shall, 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.

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

(a) The contractor shall comply with the requirements of “DOE Contractor Employee Protection Program” at 10 CFR part 798. The contractor shall, 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.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $300,000, 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 parent company, is or is not debared, suspended, or proposed for debarring 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 debared, suspended, or proposed for debarring by the Federal Government.

(e) The contractor shall comply with the requirements of “DOE Contractor Employee Protection Program” at 10 CFR part 798. The contractor shall, on behalf of DOE directly related to activities at DOE-owned or -leased sites.

(f) The contractor shall require each proposed subcontractor whose subcontract will exceed $300,000, 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 parent company, is or is not debared, suspended, or proposed for debarring by the Federal Government.

(g) 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 debared, suspended, or proposed for debarring by the Federal Government.

(h) The contractor shall require each proposed subcontractor whose subcontract will exceed $300,000, 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 parent company, is or is not debared, suspended, or proposed for debarring by the Federal Government.
62. LABORATORY SITE ACCESS AND/OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (DEC 2004)

Site Access

By entering any Laboratory facility, non-U.S. nationals are agreeing to the Laboratory’s policies and procedures. Non-U.S. nationals may also be approved for on-site access and participation in activities at Argonne National Laboratory, provided they are in accordance with U.S. law and Argonne’s policies and procedures. The Laboratory reserves the right to deny or limit access to any individual or organization for any reason, including but not limited to matters of national security, regulatory compliance, and public health.

63. 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 controls. Export control laws and regulations are intended to prevent the export of technical data, information, or commodities from the United States or any U.S. person to a foreign national or a non-U.S. person who is a resident of a foreign country, or to a foreign principal, for a foreign principal, for any such violation.

In the event of any violation of export control laws and 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.

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

The United States is committed to encourage technology transfers that are consistent with U.S. national security, nuclear non-proliferation 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, Argonne must comply with all export control laws and regulations to ensure its compliance with export controls.

Prior to travel, 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
- Patent applications
- U.S. Government funds
- Technology developed in response to an allegation and notice of any findings of research misconduct

65. CONFLICTS IN DOCUMENTATION (MAY 2001)

Any discrepancy, inconsistency, or conflict in the SCHEDULE or in or of the documents identified in the Article entitled “Applicable Documentation” which can be reasonably ascertained by the contractor shall be submitted to the Laboratory for its written decision.

Any work undertaken by the contractor without such decision shall be at the contractor’s own risk.

66. RIGHTS TO PROTOC DATA (AUGUST 2001)

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

67. 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.

68. LIMITATIONS PERIOD (MAY 2001)

Any action by the contractor for breach of contract, request for equitable adjustment, or any other claim arising under the contract must be initiated in writing to the Laboratory Procurement Officer 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.

69. VEHICLE LIABILITY INSURANCE COVERAGE (AUGUST 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, the contractor agrees to obtain
70. CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010)

(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 should—

(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.

71. 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.

72. 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). [See 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.

73. 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, holding, 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**

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

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<tbody>
<tr>
<td>J</td>
<td>Jinn Her (TW)</td>
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<tr>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
</tbody>
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**GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:**

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<tbody>
<tr>
<td>A</td>
<td>Asahi Mfg. (JP)</td>
</tr>
<tr>
<td>NF</td>
<td>Nippon Fasteners (JP)</td>
</tr>
<tr>
<td>H</td>
<td>Hinomoto Metal (JP)</td>
</tr>
<tr>
<td>M</td>
<td>Minamida Sieybo (JP)</td>
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<tr>
<td>MS</td>
<td>Minato Kogyo (JP)</td>
</tr>
<tr>
<td>hollow triangle</td>
<td>Infasco (CA TW JP YU) (Greater than 1/2 inch dia)</td>
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<tr>
<td>E</td>
<td>Dalei (JP)</td>
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<tr>
<td>UNY</td>
<td>Unyite (JP)</td>
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**GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:**

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<td>Kosaka Kogyo (JP)</td>
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**GRADE A325 FASTENERS (BENNETT DENVER TARGET ONLY) WITH THE FOLLOWING HEADMARKS:**

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

Headmarkings are usually raised – sometimes indented.

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

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

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