## 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. "Employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for and available for hire as a skilled or unskilled laborer by the contractor with respect to work under its contract with the Department at the time the particular position is available.
   (c) Consistent with Department of Energy guidance to contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
   (d) The requirements of this clause shall be included in subcontracts at any tier (except for subcontract 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 of understanding for a contingent fee, except a bona fide employee or agent of the labor organization of the employee. In any event, the contractor 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 enters nor professes to enter into an agreement for or tends to influence the solicitation of or to secure for or 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) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts or subcontracts that have an aggregate value in excess of $50,000, the Contractor shall comply with these rules and regulations, that implement the Full Faith and Credit Act of 1996, and order or rules of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO -1), or any successor form, as prescribed in 41 CFR part 60-1.5, to furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
   (c) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
   (d) The Contractor shall furnish a copy of the notice to be provided by the Contracting Officer advising the labor union or associations of employees representing employees that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
      (i) Employment;
      (ii) Upgrading;
      (iii) Demotion;
      (iv) Transfer;
      (v) Recruitment or advertising;
      (vi) Layoff or termination;
      (vii) Rates of pay or other forms of compensation; and
      (viii) Selection for training, including apprenticeship.
   (e) 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 this clause.
   (f) The Contractor shall, in all solicitations or advertisements for employment placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
   (g) The Contractor shall, in all solicitations or advertisements for employment placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

4. EMPLOYMENT REPORTS VETERANS (SEPT 2010)
   This clause applies to all subcontracts with a value in excess of $100,000 excepted by rules, regulations, or orders of the Secretary of Labor.
   (a) Definitions. As used in this clause, "Armed Forces service medallion veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause 52.223-2.
   (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 new hires, excluding the base of the workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medallion veterans, and recently separated veterans.
      (2) The total number of new employees hired during the period covered by the report, and of the total, of the number of disabled veterans, other protected veterans, Armed Forces service medallion veterans, and recently separated veterans.
      (3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.
      (c) The Contractor shall include in the Equal Employment Opportunity Commission’s EEO-1 report, report/s, if any, and/or (d) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period prior to the ending date of the report/s, if any.
      (d) The Contractor shall select an ending date—
         (1) Any day of the period between July 1 and August 31 of the year the report is due; or
         (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to end reporting for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
   (e) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-3, 60-4, and 60-5, or through employment, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.
   (f) The Contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless excepted 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—
      "All employment openings" means all positions except executive and senior management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days during any 12-month period to extend to an indefinite duration, and employment of less than 3 days during any 12-month period.
      "Armed Forces service medallion veteran" means any veteran while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medallion was awarded pursuant to Executive Order 12989 (61 FR 1290).
      "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 duties consist of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
            (iii) Who customarily and regularly directs the work of two or more other employees, or who is responsible for the hiring or firing of employees, or recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
         (2) Any employee who has at least a bane fide 20–percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
      "Other protected veteran," "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause. "Recently separated veteran" means any veteran during the three–year period beginning on the last day of such veteran’s discharge or release from active duty in the U.S. military, ground, naval or air service.
      (b) General. The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veteran, or Armed Forces service medallion veteran, regarding
any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ and advance in employment, otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based on race, color, religion, sex, national origin, political affiliation, or age; recently separated veterans, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

(i) Recruitment, adverse action, and termination and apprehension procedures.
(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
(iii) Rate of pay or any other form of compensation and changes in compensation.
(iv) Job assignments, job classifications, organizational positions, position descriptions, lines and titles.
(v) Leaves of absence, sick leave, or any other leave.
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 29 CFR, personnel meetings, conferences, and other related activities, and selection for leave of absence to pursue training.
(viii) Activities sponsored by the Contractor including social or recreational programs.
(ix) Any other term, condition, or privilege of employment.

(c) Listing openings.

(1) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(2) The Department of Labor's regulations require contractors with 50 or more employees and a contract of $10,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in every State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to this terms and has so advised the State workforce agency, it need not advise the State workforce agency of subsequent contracts.

(d) Applicability. This clause does not apply to the listing of employment openings that occur under the NLRA to organize and bargain collectively with their employers and to engage in other concerted activity, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(b) and (d).

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in accordance with 48 CFR 18.217, 48 CFR 6.202, 48 CFR 6.302, and 48 CFR 6.301-6.304.

(f) Subcontracts.

(1) The Contractor shall include the substance of this clause, including paragraph (i), in every subcontract that exceeds $10,000 in value and will be performed wholly or partially in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is considered to be employed, as defined in Executive Order 13496, by a prime contractor if the employee is performing work, in the United States, under a contract that is required to include the clause prescribed in section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor. The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 of this clause.

(2) The Contractor shall take such action as may be necessary to include 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.

(3) If, however, the Contractor does not include a subcontractor, or is threatened with involvement, as a result of such direction, the Contractor may request the Under Secretary of Labor, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

8. EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

9. APPLIES TO CONTRACTS EQUAL TO OR GREATER THAN $10,000

(f) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of $10,000 or more unless exempted under the regulations or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

(f) Subcontracts. The Contractor shall embed the terms of this clause in subcontracts of $10,000 or more unless exempted under the regulations or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.
(i) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of date of contract award.

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

(iii) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification of employment eligibility of such employee within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) Postings. If the Contractor is enrolled in an E-Verify program at the time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees.

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

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

(ii) Employed and assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) The Contractor shall comply, for the period of performance of this contract, with the requirements of this clause.

(i) Enrollment in the E-Verify program. The Contractor shall enroll as a Federal Contractor in the E-Verify program within 30 calendar days of—

(A) Enrollment in the E-Verify program; or

(B) Notification of E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(ii) India. The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(iii) During the period of suspension or debarment, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment is terminated, the Contractor may reenroll in E-Verify.


(v) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program.

(2) Who has been and holds an active U.S. Government security clearance for access to confidential, sensitive, or protected information in accordance with National Industrial Security Program Operating Manual.

(3) Who has undergone a full background investigation and been identified as possessing, or possessing source material, under Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

Subcontracts. The contractor shall, in each subcontract, include this clause recited in paragraph (i) of this subsection, or any modification of it, prescribed by the Contracting Officer.

10. SECURITY (MAR 2013)

a. Responsibility. It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified material (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of the contract, transmit to DOE all DOE classified material or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract.

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

c. Definition of Classified Information. The term "classified information" means information that has been classified for national security purposes under 18 U.S.C. 793 or 794 (the Act), as amended.

d. Definition of Special Nuclear Material. The term "special nuclear material" means—

(1) Plutonium or uranium enriched to 20% or more in 235U; or

(2) Any other material which, pursuant to 42 U.S.C. 2162 (10 U.S.C. Section 142, as amended, or prior executive orders, which is identified as National Security Information.

e. Definitions. The term "restricted Data" means all data concerning the production of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 (Section 142, as amended, of the Atomic Energy Act of 1946).

f. Registrant of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessors agencies and the Department of Defense that the information: (1) relates primarily to the military utility of atomic weapons; and (2) can be adequately protected as National Security Information.

g. Access authorizations of personnel.

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

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

i. A review must verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher education where the individual completed 75 percent or more of the last 12 months of study and when the personal information, such as conduct of criminal investigations, probation report, and last legal permanent residence; conduct local law enforcement checks when such information is available; a credit check and other checks as appropriate.

j. Access authorizations of personnel.

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

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

i. A review must verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher education where the individual completed 75 percent or more of the last 12 months of study and when the personal information, such as conduct of criminal investigations, probation report, and last legal permanent residence; conduct local law enforcement checks when such information is available; a credit check and other checks as appropriate.

ii. Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (g).
employees possessing access authorizations are subject to applicant,random or cause testing for use unauthorized drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence of their system of any illegal drug use.

v. When an uncleaned applicant or uncleaned employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in the position until receipt of the individual’s receipt of a DOE access authorization, unless an approval has been obtained from the Office of the General Counsel of the Department of Energy. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleaned employee may not be afforded access to classified information or special nuclear materials in categories requiring access authorization until an access authorization has been granted.

vi. The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleaned applicant or uncleaned employee who is selected for a position requiring an access authorization:
   A. The date(s)/method was conducted;
   B. Each entity that provided information concerning the individual;
   C. A certification that the review was conducted in accordance with all applicable laws and Executive Orders, including those governing the processing and privacy of an individual’s information collected during the review;
   D. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor’s personnel policies; and
   E. The results of the test for illegal drugs.

Criminal liability. It is understood that dissemination of any classified information relating to the work or services offered hereunder by 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 or that is in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability. If the Contractor or its Subcontractors fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default, the Contracting Officer may terminate this contract for convenience. If the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default, the Contracting Officer may terminate this contract for convenience. If the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default, the Contracting Officer may terminate this contract for convenience.

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

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

The Contractor or subcontractor shall ensure that such information is reviewed by a Department of Energy Derivative Declassifier in accordance with classification regulations, mandatory DOE classification and declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Declassified documents shall then be reviewed to determine if they are publicly releasable. Documents that are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public’s access to as much Government information as possible while minimizing security costs. The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.
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 isotope, the manufacturer of the material, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (CMR 0000-0107).

(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 the Laboratory Procurement Representative to 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) Be on the contract number on which the prior notification was submitted and the contract 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 preaudit payment, preaudit transportation documents on which the United States assumes 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 —

(1) "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."

(2) "United States" means any political subdivision of the United States, the District of Columbia, and outlying areas.

(3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 4, Subchapter I.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S.-flag air transportation, wherever foreign air transportation is available and the contractor assumes 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.

(c) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight 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.

18. PREFERENCE FOR PRIVATELY OWNED U.S. - FLAG COMMERCIAL VESSELS (FEB 2006)

(a) Except as provided in paragraph (d) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. 2511 et seq.) requires Federal departments and agencies shall transport privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities, which may be transported by ocean vessels, (computes 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, are transported by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved in transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a U.S.-flag air carrier if a U.S.-flag air carrier is available to provide such services.

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

(1) The Prerepresentation Officer; and

(2) The Contractor or shipper.

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 —

(1) "Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (19 U.S.C. 1601 et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 2162(b)(1). This definition also applies to and includes any wholly owned or majority owned subsidiaries, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2)

(2) "Commercial plan" means a product or service that satisfies the definition of commercial plan in section 215.2 of the Federal Acquisition Regulation.

(3) "Commercial plan" means a subcontracting plan (including goals) that covers the contractor’s sales of products or services to Federal agencies under Federal contracts.

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

(5) "Electronic Subcontracting Reporting System (eSRS)" means the Government-wide, electronic, web-based system for small business subcontracting program reporting.

The eSRS is located at http://www.esrs.gov

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenua, Jenulee, Siska, and Kodika) as defined in the Alaska Native Claims Settlement Act.
c. The offeror's subcontracting plan shall include the following:

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

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

1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1832:

   i. Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged businesses (SDBs) concerns, regardless of the Small Business Administration certification status of the ANC or Indian tribe.

   ii. Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or the Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

   A. In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

   B. If the ANC or Indian tribe has more than one Contractor to count the subcontract towards its goals, the ANC or Indian tribe shall designate only one of the Contractors to award the subcontract 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 or the offeror's total projected sales, expressed in dollars, and the total value of project subcontracts to support the sales for a commercial plan;

   ii. Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

   iii. Total dollars planned to be subcontracted to veteran-owned small business concerns;

   iv. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

   v. Total dollars planned to be subcontracted to HUBZone small business concerns;

   vi. Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

   vii. Total dollars planned to be subcontracted to women-owned small business concerns.

3. A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

   a. Small business concerns;

   b. Veteran-owned small business concerns;

   c. Service-disabled veteran-owned small business concerns;

   d. HUBZone small business concerns;

   e. Small disadvantaged business concerns;

   f. Women-owned small business concerns.

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

5. A description of the method used to identify potential sources for solicitation purposes (e.g., existing company databases, Regional Contractor Registry database (CCR), veteran service organizations, the National Minority Purchasing Council's Vendor Information Service, the North Central Council's database (NCCRD), the Office of Small and Disadvantaged Business Utilization's List of Small Business Concerns, and the Veterans Administration's database of veterans owned businesses) and the RSBs (e.g., the Research and Information Division of the Central Contractor Information System (CCIS), the CCR, veterans organizations, the National Minority Purchasing Council, the Research and Information Division of the Central Contractor Information Service, the North Central Council, the Office of Small and Disadvantaged Business Utilization's List of Small Business Concerns, and the Veterans Administration's database of veterans owned businesses) and the RSBs.

6. A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns (including ANCs and Indian tribes);

   a. Veteran-owned small business concerns;

   b. Service-disabled veteran-owned small business concerns;

   c. HUBZone small business concerns;

   d. Small disadvantaged business concerns (including ANCs and Indian tribes); and

   e. Women-owned small business concerns.

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

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

9. Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns," as well as all other subcontracting clause requirements, and that the offeror will require all subcontractors (except small business concerns) to provide subcontracting reports that are submitted to the Small Business Administration (SBA) for 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, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. (43 U.S.C.A. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in all subcontracting activities.

   b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a reasonable basis. The offeror's subcontracting plan shall include the following:

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

   i. Total dollars planned to be subcontracted to small business concerns (including ANCs and Indian tribes);

   ii. Total dollars planned to be subcontracted to veteran-owned small business concerns;

   iii. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

   iv. Total dollars planned to be subcontracted to HUBZone small business concerns;

   v. Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

   vi. Total dollars planned to be subcontracted to women-owned small business concerns.

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

   i. Advise small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by advertising solicitations, time for the preparation of bids or proposals, quantities, specifications, and other solicitation documents to subcontracting firms and, to the extent consistent with efficient contract performance, 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, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions.

   ii. Participate in contract negotiations with other subcontracting firms in the subcontracting program, and a description of the duties of the individual.

   iii. 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.

   iv. Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontracting Report (SSR), in accordance with the paragraph (l) of this clause when submitting their ISRs and SSRs to its subcontractors with subcontracting plans so that they can enter this information into the eSRS when submitting their ISRs and SSRs.

   v. Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to its first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs.

   vi. Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   Z. Whether eligible small business concerns were solicited and if not, why not;
e. A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

1. The master plan has been approved by—

2. The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer and—

3. Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

e. A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall be a material breach of the contract. The failure of the Contractor or subcontractor to comply in good faith with—

ii. When a subcontracting plan contains separate goals for the basic contract and any option exercised, the goals associated with the option shall be added to those in the existing subcontract plan.

j. The failure of the Contractor or subcontractor to comply in good faith with—

1. The clause of this contract entitled “Utilization of Small Business Concerns;” or

2. An approved plan required by this clause, shall be a material breach of the contract.

k. The Contractor shall submit SSRs to the web-based eSRS at http://www.esrs.gov. Purchases from a corporation, company, or subdivision that is an Affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be linked to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made for lower tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or prime Contractor. Only subcontractors performing for the prime Contractor or subcontractor are included in these reports with the exception of subcontractors under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans. Subcontracts performed outside the United States and its outlying areas—

1. SSR reports are not required for commercial plans. The report is required for each subcontract containing an individual subcontract plan—

i. The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period. Unless otherwise directed by the Contracting Officer, Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or previous reporting periods.

ii. When a subcontracting plan contains separate goals for the basic contract and any option exercised, the goals associated with the option shall be added to those in the existing subcontract plan.

iii. The authority to approve or reject the SSR resides with the Contracting Officer who approved the commercial plan.

2. SSR—

i. Reports submitted under individual contract plans—

A. This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

B. The report may be submitted on a corporate, company or subdivision (e.g., plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

C. If a prime Contractor and/or subcontractor is performing work for more than one executive agency, agencies may be combined to the extent that similar projects of the agencies are performed at the same location and are subject to the same 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 estimated amount of any contingencies included in the price, unless an exception under FAR 15.403-1 applies.

ii. The authority to approve or reject the SSR resides with the Contracting Officer who approved the commercial plan.

A. In the case of the prime Contractor, with the Contracting Officer; and

B. In the case of a subcontractor, with the Contracting Officer who approved the commercial plan.

C. If a prime Contractor and/or subcontractor is performing work for more than one executive agency, agencies may be combined to the extent that similar projects of the agencies are performed at the same location and are subject to the same 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 estimated amount of any contingencies included in the price, unless an exception under FAR 15.403-1 applies.

24. UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns—

(1) Should have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for construction projects, professional services, research and development projects, and commodities; and

(2) Should be treated consistent with 13 CFR part 124, Subpart B; consistent with 13 CFR part 126, Subpart C; and consistent with 13 CFR part 127, Subpart D.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13, “Subcontractor Certified Cost or Pricing Data,” that awarded the subcontract.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.404-1, when entered into, the Contractor shall insert—

1. The substance of the clause at FAR 52.215-13, “Subcontractor Certified Cost or Pricing Data—Modifications.”

(d) The Contractor need not submit any report containing a statement of avoidance of small business concerns under the clause at 52.215-3, “Utilization of Small Business Concerns,” unless the statement of avoidance is required by the Government agency awarding the prime contracts unless stated otherwise in the contract.

25. SUBCONTRACTOR COST OR PRICING DATA (OCT 2010)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later, or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Prime 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 reason for the estimate or pricing data and the factors, assumptions, and limitations used in the estimate or pricing data).

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 52.215-13, “Subcontractor Certified Cost or Pricing Data,” that awarded the subcontract.

(c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert—

1. The substance of the clause at FAR 52.215-3, “Utilization of Small Business Concerns,” unless the statement of avoidance is required by the Government agency awarding the prime contracts unless stated otherwise in the contract.
25. PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEVIATION (AUG 2012))

This clause implements the temporary policy provided by OMB Policy Memorandum M -12-16, Providing Prompt Payment to Small Business (May 15, 2012).

(a) Upon receipt of accelerated payments from the Government, the Contractor is required to make accelerated payments to subcontractors that were not subsequently awarded the subcontract shall—

(i) The Contractor or subcontractor had a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract or subcontract would not have been increased even if the data had been submitted.

(ii) The Contracting Officer that its effort added value to the contract or subcontract in accomplishing the acquisition threshold ($100,000).

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

(iv) The SBA HUBZone Help Desk at hubzone@sba.gov.

26. SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS (OCT 2013)

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

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

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

(d) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the data had been submitted.

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

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

(i) The government proves that the facts demonstrate that the price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the data submitted under paragraph (b) of this clause were complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(B) The Contractor proves that the certified cost or pricing data were available before the 'as of' date specified on its Certificate of Current Cost or Pricing Data, and the data were not submitted before such date.

(ii) The Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(iii) The contractor shall be liable to and shall pay the United States at the time such overpayment is repaid:

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(1)(B), and

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

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

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

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause involving any cost or pricing data, was increased by any significant amount because—

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

(ii) The Contractor or subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current and the Contractor certified cost or pricing data had been submitted.

(iii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iv) The Contracting Officer determined under paragraph (a) of this clause that a pricing or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(A) The Contractor or subcontractor had a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract or subcontract would not have been increased even if the data had been submitted.

(B) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the data submitted under paragraph (b) of this clause were complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

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

(D) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the data had been submitted before the 'as of' date specified on its Certificate of Current Cost or Pricing Data.

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

(iv) The Contractor or subcontractor submitted a Certificate of Current Cost or Pricing Data, and the data were not submitted before such date.

29. LIMITATIONS ON PASS-THROUGH CHARGES (CIT 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—

(1) “Excessive pass-through charge,” with respect to a Contractor or subcontractor that adds no value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor that will add no value to a contract or subcontract.

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the data had been submitted.

(C) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the data submitted under paragraph (b) of this clause were complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

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

(E) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the data had been submitted before the 'as of' date specified on its Certificate of Current Cost or Pricing Data.

(F) The Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor that will add no value to a contract or subcontract.

(1) “Added value” means that the Contractor performs subcontract management functions that the subcontractor would not have performed even if the data had been submitted.

(2) “Subcontract” means any contract, as defined in FAR 2.101, entered into by a subcontractor in connection with any modification under this clause involving any cost or pricing data, was increased by any significant amount because—

(a) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the data submitted under paragraph (b) of this clause were complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data.

(b) The Contractor proves that the certified cost or pricing data were available before the “as of” date specified on its Certificate of Current Cost or Pricing Data, and the data were not submitted before such date.

(c) If any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall not be limited to the amount, plus applicable overhead and profit markup, by which the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract cost was not itself affected by defective certified cost or pricing data.

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

(i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or

(ii) The SBA HUBZone Help Desk at hubzone@sba.gov.
(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the amount of effort that the subcontractor was to perform under its subcontract. The notification shall identify the revised cost of the subcontractor 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).

(d) Recovery of excessive pass-through charges. If the Contracting Officer determines that excessive pass-through charges are incurred in complying with the provisions in FAR subpart 31.2 and 31.5, the Government shall be entitled to a price reduction for the amount of excessive pass-through charges.

(e) Access to records.

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined in FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(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 subcontractor's records (as defined in FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) Flowdown. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 41 U.S.C. 709(b)(2), that exceed the thresholds for obtaining cost or pricing data in accordance with FAR 15.403-4.

30. CHANGES—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 if 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, or specifications.

(2) Method of shipment or packing.

(3) Descriptions of services to be performed.

(b) If any change is made in the amount of work, the cost, or the time required for performance, the cost of any additional or substitute supplies or services provided to the Laboratory under the termination clause of this contract.

(c) The contractor shall become liable for any increased cost or make an equitable reduction in any fixed fee. "Default" includes failure to make progress in the work so as to endanger performance. The contractor after any of the contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(d) Notwithstanding any other provision of this clause or any other provision of law, if the contractor is entitled to a modification of the contract, the contractor may have the right to recover from the Government the or correction charge, and (9) unusually severe weather. In each of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in because of any failure to perform this contract under its terms if the failure arises from (3) A separate and complete major industrial operation connected with performing this contract.

(e) If the contractor fails to complete, or current, the action taken by the contractor and the subcontractor's certified cost or pricing data were not accurate, in good faith, or willful misconduct on the part of the Contractor or, after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(f) Consent to subcontract" means the 's written consent for the Contractor to enter into a particular subcontract.

(g) "Reduced cost" means any amount, as defined in FAR Subpart 21.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchases, changes, and modifications to purchase orders. When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(h) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or (2) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the increment of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(i) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(j) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, the greater of the National Aeronautics and Space Administration, the greater of the acquisition threshold or 5 percent of the total estimated cost of the contract.

(k) If the Contractor has an approved purchasing system, the contractor and subcontractor shall obtain the Laboratory Procurement Officer's written consent before placing the following contacts:

(1) The Contractor shall notify the Laboratory Procurement Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(a) Description of the supplies or services to be subcontracted.

(b) Identification of the subcontractor.

(c) Identification of the proposed subcontractor.

(d) The proposed subcontract price.

(e) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other provisions of this contract.

(f) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(g) A negotiation memorandum reflecting—

(1) The principal elements of the change and the contract price negotiations; (2) The most significant considerations controlling establishment of initial contract prices; (3) The reason certified cost or pricing data were not or were required; (4) The extent, if any, to which the contractor did not rely on the certified cost or pricing data in determining the price objective and in negotiating the final price; (5) The extent to which it was recognized in the negotiation that the inflated cost or price of the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the justification for such inaccurate data on the total price negotiated; (6) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and (7) A complete explanation of the incentive fee or profit plan when such fees or profits are used. The explanation shall identify each critical performance element, management decisions used to quantify each
(a) The Contractor shall insert the following clauses in subcontracts for commercial items:

(1) Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the Laboratory. The Laboratory may, at its option, furnish property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(2) The Contractor shall notify the Laboratory Procurement Official reasonably in advance of any action or suit filed and prompt notice of any claim made against the Contracting Officer by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related to the performance of this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(3) The Laboratory reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 43.

(b) Unless the consent or approval specifically provides otherwise, neither consent by the Contractor, nor any Court, nor the Government, nor a Government Official, nor a Government Contracting Officer shall notify the Laboratory Procurement Official.

33. ASSIGNMENT (OCT 1999)

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

36. SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)

(a) Definitions. As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions. 

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

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

The Contractor shall assign the terms below in the clause for commercial items as practical.

(b) Property management.

The Contractor shall have a system to manage control, use, protect, repair, and maintain Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

The Contractor will be given the opportunity to inspect such property prior to its intended use, the Laboratory Procurement Official shall, upon the Contractor’s timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, or returning the property at the Contractor’s expense. Upon completion of the required action(s), the Laboratory Procurement Official shall consider an equitable adjustment to the contract. The Contractor may, at its option, purchase property in an “as-is” condition. The Contractor will be given the opportunity to inspect such property prior to its intended use, the Laboratory Procurement Official shall consider an equitable adjustment to the contract. The Contractor may, at its option, purchase property in an “as-is” condition.

The Government may, at its option, purchase property in an “as-is” condition. The Contractor will be given the opportunity to inspect such property prior to its intended use, the Laboratory Procurement Official shall consider an equitable adjustment to the contract. The Contractor may, at its option, purchase property in an “as-is” condition.

The Government may, at its option, purchase property in an “as-is” condition. The Contractor will be given the opportunity to inspect such property prior to its intended use, the Laboratory Procurement Official shall consider an equitable adjustment to the contract. The Contractor may, at its option, purchase property in an “as-is” condition.
Contractor plans and systems

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

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

(b) Receipt of Government Property. The Contractor shall receive government property (document the receipt), for example, by inventorying all property conveyed or transferred to it to meet the record requirements of paragraph (a)(1)(i)(A) through (5) of this clause, identify as Government property (document the receipt), and manage any discrepancies incident to shipment.

(c) Contract-awarded Property. The Contractor shall take all actions necessary to adjust for overages, shortages, damages and other discrepancies discovered after receipt, except in shipment of contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(d) Records of Government Property. The Contractor shall create and maintain current, auditable records of all Government property accountable to the contract, including Government-furnished and contractor-acquired property.

(e) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(i) The name, part number and description, manufacturer, model number, serial number, and other identifying characteristics (if available and necessary for individual identification tracking and/or disposition).

(ii) Quantity received (or fabricated, issued, and balance-on-hand). Unit weight, length, or cubic content.

(iii) Unique-item identifier (if available and necessary for individual item tracking).

(iv) Unit of measurement.

(v) Accountable contract number or equivalent code designation.

(vi) Location.

(vii) Disposition.

(viii) Persistent reference and date of transaction.

(ix) Date placed in service.

(x) Use of a Receipt and Issue System for Government Material. When provided by the Property Administrator, the Contractor shall maintain a system of issuance and receipt of Government property in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material issued for Government use, charged and returned.

(xi) Physical Inventory. The contractor shall periodically perform, record, and reconcile physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this legal requirement to the extent of the overall reliability of the Contractor’s system or the property is to be transferred to a follow-on contract.

(xii) Subcontractor control. The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss, theft, damage or destruction of Government property).

(xiii) Wherever possible and practicable, the Contractor shall ensure that subcontractors’ property management practices are adequate, and present an undue risk to the Government only as authorized under this contract.

(xiv) The Contractor shall periodically perform, record and reconcile subcontractor changes in the physical inventory results. The Contractor shall notify the Property Administrator of any property change that affects Government property (e.g., physical inventory tracking).

(xv) The Contractor shall promptly and accurately report losses, thefts, damages, or destructions of Government property and shall perform a systematic and reliable investigation and security of the loss, theft, damage or destruction of Government property.

(xvi) The Contractor’s receipt and issue system shall be designed to ensure accountability for Government property and shall be able to manage and control Government property under this contract.

(xvii) The Contractor shall maintain detailed and accurate transaction records.

(xviii) The Contractor shall maintain policies and procedures to prevent or correct unauthorized or improper use of Government property.

(xix) The Contractor shall report any violation of the Government property management system to the Property Administrator.

(x) Contractor Liability for Government Property.

(ii) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to Government property that is attributable only to actions, omissions, or causes beyond the control of the Contractor.

(iii) The Contractor shall maintain policies and procedures to prevent or correct unauthorized or improper use of Government property.

(iv) The Contractor shall, where possible, maintain and support the Government property management system.
damage or destruction of Government property did not result from the schedule for case of property management nor does the Contractor shall not be held liable.

(3) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage or destruction. The Contractor shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other actions as the Property Administrator directs.

(4) The Contractor shall do nothing to prejudice the Government’s rights to recover against third parties for any loss, theft, damage or destruction of Government property.

(5) Upon the request of the Laboratory Procurement Official, the Contractor shall, at the Government’s expense, furnish to the Government all reasonable assistance and cooperation, including the provision of records, inspection of instruments of assignment in favor of the Government in obtaining recovery.

(6) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause of the basic clause, and the Government shall not be liable for breach of contract for the following:

(1) Any delay in payment by the Government of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) Increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer.

Scrap to which the Government has obtained title under paragraph (e) of this clause shall separate the damaged and undamaged Government property, place all the Government contracts under paragraph (j)(2)(i)(A) of this clause, property that—

(a) Requires demilitarization;

(b) Is a classified item;

(c) Contains hazardous materials or hazardous wastes;

(d) Contains precious metals that are economically benefited to recover; or

(e) Is dangerous to the public health, safety, or welfare.

Contractor without the prior agreement of the Government without the prior approval of the Government. The Contractor shall submit an inventory disposal schedule for all scrap. The Contractor may not dispose of scrap resulting from production or testing under this contract without the prior approval of the Government. All communications under this clause shall be in writing.

(2) Predisposing requirements.

(i) Before the Contractor determines that Contractor-acquired property is no longer needed for contract performance, the Contractor in the following order of priority—

(A) May contact the Laboratory Procurement Official if use of the property in the performance of other Government contracts is practical;

(B) May contact the property if the acquisition cost is less than the Government property.

(ii) Make reasonable efforts to return unused property to the Government.

(C) The Contractor shall submit a form to the Laboratory Procurement Official for each item of property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.

Inventory disposal schedules.

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

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

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

(C) Termination inventory.

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

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

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

(E) Precious metals or precious metal alloys;

(F) Nonhazardous hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear waste.

(iv) The contractor shall provide the information required by FAR 52.245-11/1(iii) along with the following:

(A) Additional information that may facilitate understanding of the property’s intended use.

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

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

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

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

(F) Property with the same description, condition code, and reporting location grouped in a single entry on the line item.

(G) Scrap should be reported by “lot” along with metal content, estimated weight and estimated value.

Submission requirements; The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than:

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

(ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance.

(iii) 120 days, or such longer period as may be approved by the Laboratory Procurement Official following contract termination in whole or in part.

Corrections. The Plant Clearance Officer may—

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

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

Postsubmittion adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule, or any delay in this furnishing, shall entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(i) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposal instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Agreement does not relieve the Contractor of any liability for such property under this contract.

Storage.

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

(ii) The Contractors shall obtain the Plant Clearance Officer’s approval to remove Government property from the premises where the property is currently located prior to receipt of final disposal instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property’s physical safety and suitability for use. Agreement does not relieve the Contractor of any liability for such property under this contract.

Disposal instructions.

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

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

(iii) The Laboratory Procurement Official may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may not remove or destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

Abandonment of Government property.

(1) The Contractor shall not abandon sensitive Government property or termination inventory without the prior approval of the Government. All communications under this clause shall be in writing.

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

(3) The Government has no obligation to restore or rehabilitate the Contractor’s premises under any Government contract. If Government property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

Communication. All communications under this clause shall be in writing.

(1) The Contractor assures the Government of its “good faith” performance outside of the United States and its outlying areas, the words “Government” and “Government-furnished” wherever they appear in this clause, are construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

Alternate I (Aug 2010).

For contracts other than cost reimbursement, labor hour, time and materials, and fixed price types, substitute the following for paragraph (h)(2) of the basic clause.

(1) The Contractor assumes the risk of, and shall be responsible for, any loss, theft, damage or destruction of Government property upon its delivery to the Contractor as Government-furnished property. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

Alternate II (June 2007).

For contracts for the conduct of basic or applied research at nonprofit institutions of higher education, or any federal or nonfederal nonprofit organization whose primary purpose is the conduct of scientific research, substitute the following for paragraph (e)(3) of the basic clause.

(3) Title to property (and other tangible personal property) purchased with funds available for research less than $50,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; provided that the Contractor shall obtain the Laboratory Procurement Official’s approval before each acquisition. Title to property purchased with funds available for research having an acquisition cost of $50,000 or more shall vest as set forth in this contract. If title to property vests in the Contractor under this paragraph, the Contractor agrees that no costs shall be allowed for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Laboratory Procurement Official a list of all property to which title is vested in the Contractor under this paragraph. The Contractor shall, prior to this list being accepted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

38. 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 personnel listed in that clause, the Contractor shall notify the Laboratory Procurement Official. If the Contractor deems immediate removal or suspension of any member of its management team necessary to fulfill its obligation to maintain satisfactory standards of performance and integrity, the Contractor may remove or suspend such person at once, although the Contractor must notify Laboratory Procurement Official prior to or concurrently with such action.

b. The list of personnel may be amended from time to time during the course of the contract to add or delete personnel.
39. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (or any of their dependents) shall be permitted to work over 40 hours in any workweek unless they are paid at least 1 1/2 times the base rate of pay for all such overtime. In addition, no Contractor or subcontractor shall be liable for liquidated damages payable to the Government or the Laboratory. The Laboratory Procurement Representative will deduct liquidated damages at the rate of $10 per workday 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 Federal Work Hours and Safety Standards Act.

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

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

Payrolls and basic records,

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

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

Subcontracts,

(1) The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may involve or require the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

40. WALSH-HEaley PUBLIC CONTRACTS ACT (OCT 2010)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed $15,000, the provisions of the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of the Treasury, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

41. INTEGRITY OF UNIT PRICES (OCT 2010)

This clause applies to all subcontracts that exceed $50,000.

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

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

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41, services where supplies are not required; commercial items; and petroleum products.

WARRANTY OF SERVICES (MAY 2001)

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

(b) Notwithstanding inspection and acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in material or workmanship. The Laboratory's refusal to accept work is not a defense to the requirements of this contract. The Laboratory Procurement Official shall give written notice to the Contractor of any defect or nonconformance found within 30 days from the date of acceptance by the Laboratory. This notice shall state either—

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

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

(c) If the Contractor is required to correct or reperform, the Contractor shall not at its own cost correct or reperform in order to meet the time of acceptance. The Contractor may require the Contractor's representative to inspect the Contractor's plant in order to determine the nature of the defect or nonconformance.

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

43. WARRANTY OF SUPPLIES (DEC 2011)

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

Energy Star Products

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


In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (http://www.epa.gov/energy/energypractices/eo13423.htm) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance

(http://www.archives.gov/federal-register/executive-orders/disposition.html). The Contractor shall also consider the best practices contained in Chapter 23 of the Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, bio-based products, energy efficient products, alternative fuels and vehicles, non ozone depleting substances and other environmentally preferable products and services. This guide is available on the internet at

46. STATE AND LOCAL TAXES (DEC 2000)

(a) The Contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the work referenced in this contract. The Contractor may, in its discretion, seek reimbursement of any such tax, fee, or charge from the Laboratory. The Contractor shall furnish to the Laboratory a list, certified as to quantity and quality, of termination inventory not previously disposed of, which list shall indicate the tax, fee, or charge against which the Contractor seeks reimbursement.

(b) The Laboratory Procurement Official shall terminate by delivering to the Contractor a Notice of Termination (Cost-Reimbursement) (MAY 2004) no later than 120 days from the effective date of termination, unless extended in writing by the Laboratory Procurement Official. The Notice of Termination shall contain the amount of any tax, fee, or charge paid by the Contractor which the Contractor has determined is an allowable item of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Contractor shall, at his own expense, be associated with the Laboratory or Government representatives in any such claim or litigation.

47. TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

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

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

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Laboratory Procurement Official) after receiving a written notice specifying the default.

(b) The Laboratory Procurement Official may effect a termination by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default, any taxes, fees, or charges paid by the Contractor that are later determined to be invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge, with the approval of the Laboratory, or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge that the contractor paid in good faith, with the approval of the Laboratory, or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge that the contractor paid in good faith.

(c) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraphs (f), (h), or (l) of this clause. The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(d) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(e) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(f) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(g) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(h) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(i) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(j) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.

(k) The Contractor shall have the right of appeal from any determination made by the Laboratory Procurement Official under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Contractor shall have no right of appeal. If the Contractor fails to submit the termination settlement proposal within the time provided in paragraph (h) of this clause, the Laboratory shall pay the Contractor—

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

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

(3) Any amount agreed upon with the Contractor for materials, supplies, or other things acquired by the Government or the Contractor; or on the basis of advice from the Laboratory that such tax, fee, or charge was invalid.
(6) "Subcontractor," as used in this clause, means a contract or subcontractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) "Subcontractor Employee," as used in this clause, means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract. A contractor is any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier Subcontractor.

(8) "Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.


(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Participating in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (demonstrations) of the person's products or services, conditions or terms of sale, and the like.

(B) The application or adaptation of the person's products or services for an agency's use.

(c) The Act prohibits a person (i) making any Federal grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds, other than Federal appropriated funds, the Government will assume that payments are made to any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds, other than Federal appropriated funds, the Government will assume that payments are made to any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(4) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or offer that is not a covered Federal action, the Contractor is permitted to use such funds.

(5) Impose any limitations on the acceptance of any bid, proposal, or offer that is not a covered Federal action, the Contractor is permitted to use such funds.

(6) "Subcontract," as used in this clause, means a contract or contractual action entered into by a Subcontractor to a prime Contractor or higher-tier Subcontractor.

(7) "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.

(8) "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Native Cooperatives.

(9) The requirements of this clause do not prejudice the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercially available items, the provisions of paragraphs (a) and (d) apply to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item.

(10) "Covered Federal action" means a contract, grant, cooperative agreement, or loan from an agency, but only with respect to Federal appropriated funds, the Government will assume that payments are made to any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

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

(c) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds, other than Federal appropriated funds, the Government will assume that payments are made to any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient funds, other than Federal appropriated funds, the Government will assume that payments are made to any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) In all circumstances, the Contractor shall ensure that no person is paid for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient funds, other than Federal appropriated funds, the Government will assume that payments are made to any person for influencing or attempting to influence any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal actions.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.
52. LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Laboratory more than (1) the estimated cost specified in the Schedule, or (2) if this is a cost-sharing contract, the Laboratory's share of the estimated cost specified in the Schedule. The contractor agrees to use its best efforts to perform the work specified in the Schedule with the funds available, and the contractor shall notify the Authorized Laboratory Procurement Official in accordance with [Federal Acquisition Regulation (FAR) Subpart 31.2 and] the Laboratory if the contractor expects to incur costs in excess of (1) the estimated cost specified in the Schedule, or (2) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule.

(b) If the estimated cost specified in the Schedule is increased, any costs the contractor incurs in excess of (i) the estimated cost specified in the Schedule, or (ii) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule, shall be allowable to the contractor for the additional funds required to continue timely performance under the contract.

(c) The contractor shall not be liable to the Laboratory for costs incurred in excess of (1) the estimated cost specified in the Schedule, or (2) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule, if the contractor expected those excess costs when it submitted the estimate, or as a result of the contractor's actions prior to the increase in the estimated cost. Change orders shall not be considered an authorization to exceed the estimated cost to the Laboratory specified in the Schedule, unless they state a change in the estimated cost.

(d) If the estimated cost specified in the Schedule is increased, any costs the contractor incurs in excess of (i) the estimated cost specified in the Schedule, or (ii) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule, shall be allowable to the contractor for the additional funds required to continue timely performance under the contract.

53. LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Laboratory more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Laboratory's share of the estimated cost specified in the Schedule. The contractor agrees to use its best efforts to perform the work specified in the Schedule with the funds available, and the contractor shall notify the Authorized Laboratory Procurement Official in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 and the Laboratory if the contractor expects to incur costs in excess of (1) the estimated cost specified in the Schedule, or (2) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule.

(b) The contractor shall notify the Authorized Laboratory Procurement Official in writing whenever it has reason to believe that costs it expects to incur in this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule.

(c) The contractor shall notify the Authorized Laboratory Procurement Official if any additional funds, if any, are required to continue timely performance under the contract or for any further period specified by the Authorized Laboratory Procurement Official.

(d) The contractor shall notify the Authorized Laboratory Procurement Official if the contractor expects to incur costs in excess of an estimated amount, which shall then constitute the total amount allotted by the Laboratory to the contract.

(e) The contractor shall notify the Authorized Laboratory Procurement Official if the contractor expects to incur costs in excess of (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule, if the contractor expected those excess costs when it submitted the estimate, or as a result of the contractor's actions prior to the increase in the estimated cost. Change orders shall not be considered an authorization to exceed the estimated cost to the Laboratory specified in the Schedule, unless they state a change in the estimated cost.

(f) If the estimated cost specified in the Schedule is increased, any costs the contractor incurs in excess of (i) the estimated cost specified in the Schedule, or (ii) if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule, shall be allowable to the contractor for the additional funds required to continue timely performance under the contract.

54. ALLOWABLE COST AND PAYMENT (JUN 2013)

(a) 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 2 weeks, in amounts determined to be allowable by the Laboratory

(b) Invoices shall be submitted by the Contractor to the Authorized Laboratory Procurement Official, in accordance with [Federal Acquisition Regulation (FAR) Subpart 31.2 and] the Laboratory, and shall include a description of the work performed and the costs incurred. The Contractor shall, at the end of the calendar quarter in which the work performed is reported, certify that all amounts paid to subcontractors in that quarter exceed $150,000.

(c) Upon receipt of an invoice, the Authorized Laboratory Procurement Official shall determine if the costs charged by the Contractor are allowable and allocable to the contract. Unless otherwise specified in the contract, the cost determined to be allocable shall be paid within 60 days after receipt of the invoice. The amount of the payment shall be the amount certified by the Contractor and determined to be allocable, subject to adjustment under paragraph (d) of this clause.

(d) Notwithstanding the audit and adjustment of invoices or vouchers under the Termination clause of this contract, or otherwise incur costs in excess of the estimated cost to the Laboratory, such costs shall be allowable to the contractor if the contractor certifies that such costs are allocable to the contract and if the estimated cost specified in the Schedule or, if this is a cost-sharing contract, the increase shall be not less than 5 percent of the estimated cost specified in the Schedule, was reasonable and necessary to meet obligations under this contract.

(e) Reimbursing costs.

(1) The Contractor is not delinquent in paying costs of contract performance on time, or in complying with any other provision of this contract.

(2) The Contractor has not filed or amended a disclosure form required by paragraph (d), as provided in paragraph (b)(2) above, or from any person other than the Authorized Laboratory Procurement Official, shall affect this contract's estimated cost to the Laboratory.

(f) The Contractor is not delinquent in paying costs of contract performance on time, or in complying with any other provision of this contract.

(2) The Contractor has not filed or amended a disclosure form required by paragraph (d), as provided in paragraph (b)(2) above, or from any person other than the Authorized Laboratory Procurement Official, shall affect this contract's estimated cost to the Laboratory.

(g) The Contractor is not delinquent in paying costs of contract performance on time, or in complying with any other provision of this contract.

(h) The Contractor has not filed or amended a disclosure form required by paragraph (d), as provided in paragraph (b)(2) above, or from any person other than the Authorized Laboratory Procurement Official, shall affect this contract's estimated cost to the Laboratory.
Final indirect cost rates.

(i) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 92.400 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

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

(iii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as possible after receipt of the Contractor's proposal.

(iv) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(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 costs in the form of cost as identified in accounting records (Chart of Accounts).

(C) Overhead 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.

(D) Distribution expenses (intermediate 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 pools.

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

(F) Facilities capital cost of money factors computations.

(G) Reconciliation of books of account (i.e., General Ledger) and claimed indirect costs by element of cost as identified in accounting records (Chart of Accounts). Government participation percentages in each of the allocation base items.

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

(I) Subcontract information. Listing of subcontracts awarded to companies for which the contractor is 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) Reconciliation of total payroll prior to IRS Form 941 to total labor costs.

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

(M) Certificate of final indirect cost rate (FAR 52.242-4, Certification of Final Indirect Costs).

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

(v) 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 expense pools detailed by account as per prior fiscal year and budgetary data.

(B) Certification of the contractor's Organizational Information and Executive compensation for the five most highly compensated executives. See 31.205-6(p).

(C) Detailed information of any changes to the accounting system has not changed from the information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(D) Reconciliation of total payroll prior to IRS Form 941 to total labor costs.

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

(F) Certificate of final indirect cost rate (FAR 52.242-4, Certification of Final Indirect Costs).

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

(vi) The information included in the proposal is subject to the provisions of the Disputes clause.

55. BANKRUPTCY (JUL 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, and such bankruptcy occurs after the contract is awarded or a subcontractor agrees to perform, the contractor agrees to notify the Government of the bankruptcy to the Laboratory Procurement Official responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filed. The contractor shall include the date of the petition or notice of bankruptcy, the identity of the court in which the bankruptcy petition was filed, and a listing of Laboratory contract numbers for which the contractor is the prime or upper-tier contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(A) A statement 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 Contractor has been reimbursed by the Government under this contract, and

(B) A release discharging the Contractor, its officers, agents, and employees from all liabilities, obligations, claims, and accounting (if any) outstanding prior to this date under this contract, except—

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

(ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor or subcontractor, out of the performance of this contract; provided, that the claims are not known to the Contractor prior to the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Laboratory Procurement Official within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor in good faith in the performance of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

56. 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, use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Syria are prohibited, as are most transactions involving Burma, North Korea, or if OFAC determines that an embargo is in effect against an entity, country, or entity, that OFAC determines, by executive order or directive or are in fact segregated on the basis of race, color, religion, sex, national origin because of written or oral policies or employee custom. The term does not include a manufacturer or single dwelling or sleeping areas provided to assure privacy between the sexes.

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

The contractor shall insert this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.
58. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)

a. Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collection of, accruing to the Contractor from the Government; the work under this contract; other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property. All books of account and records relating to this contract shall be preserved by 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 periodic inspection by DOE or its designee in accordance with the provisions of Clause. Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (b) of this clause, and the Contractor shall afford DOE and its designees complete and unrestricted access to its books of account and records and other documents pertaining to this contract. DOE or its designee may make copies of any records or work papers prepared or preserved 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 cost record to ensure that the sole purpose of such audit is to verify that the costs incurred under this contract are fairly stated.

c. Audit of subcontractors’ records. The Contractor also agrees, with respect to any subcontractors (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor. The Contractor shall require each proposed subcontractor whose subcontract will exceed $30,000 in value to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor or its principals, is or is not debared, suspended, or proposed for debartment by the Federal Government.

59. 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 will be the property of the Laboratory and shall be delivered to the Laboratory or otherwise disposed of by the contractor as the Laboratory Procurement Representative may direct in accordance with paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(b) Laboratory Procurement Representative. The Contractor shall require each proposed subcontractor whose subcontract will exceed $30,000 in value to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor or its principals, is or is not debared, suspended, or proposed for debartment by the Federal Government.

60. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

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

(b) The contractor shall insert or have inserted the substance of this clause, including paragraph (b), in all subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
63. RESEARCH MISCONDUCT (JUL 2005)

The contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the preservation, inspection, and destruction of all research records and, remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

Unless otherwise instructed by the Laboratory Procurement Official (LPO), the contractor must maintain internal inquiry into any allegations of research misconduct. If the contractor determines that there is sufficient evidence for an investigation, it must notify the contracting officer and, unless otherwise instructed by the contracting officer, must:

1. Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of any specific player or group of players, or a determination that no further action is warranted.
2. If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry and investigation and is separated organizationally from the element which conducted the investigation.
3. Inform the LPO if an initial inquiry supports a formal investigation and, if requested by the contracting officer thereafter, keep the LPO informed of the results of the investigation and any further specific sanctions recommended.
4. Upon completion of the investigation, the contractor will forward to the contracting officer a copy of the evidentiary record, the investigation summary report, and any recommendations to the contracting officer, the adjudicating official, the adjudicating official’s decision and notification of any corrective action taken or planned, and the subject’s written response (if any).
5. The laboratory may elicit information from Cuba, if necessary, by conducting an inquiry or investigation into an allegation of research misconduct if the LPO finds that:
   a. The research organization is not prepared to handle the allegation in a manner consistent with this clause.
   b. The allegation involves an entity sufficiently small size that it cannot reasonably conduct the investigation in-house.
   c. Laboratory involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest.
6. The investigation involves possible criminal misconduct.
7. Conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Laboratory, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
   a. Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall notify all subjects of allegations that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding specific allegations; against the individual(s) of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.
   b. Objectivity and Expertise. The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate skills and have no unexplained conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.
   c. Timeliness. The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation shall be completed within 60 days of receipt of the complaint and investigation should be complete within 90 days of receipt of the record of investigation.
   d. Confidentiality. To the extent possible, consistent with fair and thorough processing of allegations of research misconduct, the contractor shall maintain confidentiality about the identity of the subjects of allegations and informants should be limited to those with a need to know.
   e. Remediation and Sanction. If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and any other appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remediation actions with the LPO. The contractor must also consider what personnel sanctions are appropriate. Any such sanction must be consistent and effectuated consistent with any applicable personnel laws, policies, and procedures, and shall be consistent with the accuracy of the findings and the correctness of the misconduct.
   f. Laboratory's Antiterrorism and Export Controls Program (AEC)
   g. By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating or investigating, and reporting allegations of research misconduct, and that it has established an administrative process for the research misconduct. The contractor must take all necessary corrective actions within 30 days of the receipt of an allegation, and the contractor shall notify the appropriate personnel and the Laboratory of such findings.

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

Site Access

Site access, including cyber access allowing a laboratory account, by all non-U.S. citizens must be submitted by the principal investigator or his/her designee to the Laboratory's Security Office. All requests must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for 30 days or less) or assignees (on site for more than 30 days). All access requests must be submitted for each visit or assignment. Form ANL-593 should be submitted as far in advance as possible (a minimum of 30 days for a sensitive assignment, 7 days for a non-sensitive assignment or an index check visit).

For assignments (more than 30 days) involving a foreign national from a “Sensitive Country”, and/or access to all classified or classified/non-classified Sensitive Compartmented Information (SCI) and/or access to a security area of the Laboratory or access to a sensitive subject, at least 30 days advance notice should be provided to ensure that Security, Counterintelligence, and Export Control reviews can be completed, and a DOE indices check can be completed prior to approval. In cases where the foreign national is not a non-U.S. citizen, the Laboratory’s Security Office must be notified at the time of the request for a security clearance.

(20) The contractor understands that the materials and/or information being transmitted under the performance of this contract may be subject to U.S. government laws and regulations regarding export or re-export. This includes deemed exports which are any communication of technical data to a foreign person, whether or not it is encrypted, and any technical data or equipment (data) provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or by any other means through computer networks, electronic mail, or other means of transmission or by any means of communication to a foreign national, whether it takes place in the United States or abroad. Technical information includes computer software.

65. EXPORT LICENSE AGREEMENT (AUG 2002)

The contractor understands that the materials and/or information being transmitted under the performance of this contract may be subject to U.S. government laws and regulations regarding export or re-export. This includes deemed exports which are any communication of technical data to a foreign person, whether or not it is encrypted, and any technical data or equipment (data) provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or by any other means through computer networks, electronic mail, or other means of communication to a foreign national, whether it takes place in the United States or abroad.
their country are considered exports. You and the Laboratory can be held liable for improperly transferring controlled technologies. You and the Laboratory can be held liable for improperly transferring controlled technologies.

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

(c) The Contractor is encouraged to—

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

(i) For Government-owned and Government-contracted vehicles;

(ii) For privately-owned vehicles when on official Government business; and

(iii) 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 texting 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.

73. INTEGRATION CLAUSE (MAY 2001)

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

74. 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:

   (a) 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.)

   (b) 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.
SUSPECT/COUNTERFEIT PART

HEADMARK LIST

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

Grade 5

Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK MANUFACTURER

J Jinn Her (TW)

KS Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK MANUFACTURER

A Asahi Mfg. (JP)

NF Nippon Fasteners (JP)

H Hinomoto Metal (JP)

M Minamida Sinyo (JP)

MS Minato Kogyo (JP)

Hollow Triangle Infasco (CA TW JP YU) (Greater than 1/2 inch dia)

E Dalei (JP)

MARK MANUFACTURER

UNY Unytite (JP)

GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:

MARK MANUFACTURER

KS Kosaka Kogyo (JP)

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

MARK MANUFACTURER

Type 1 A325 KS Kosaka Kogyo (JP)

Type 2 A325 KS Kosaka Kogyo (JP)

Type 3 A325 KS Kosaka Kogyo (JP)

Headmarkings are usually raised – sometimes indented.

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

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

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