ARGONNE TERMS AND CONDITIONS
(FOR COST-REIMBURSEMENT CONTRACTS)

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3. EQUAL OPPORTUNITY (APR 2015)

(a) Definition. As used in this clause, "gender identity" has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and found at www.dol.gov/ofccp/LGBT/LGBT_FAQs_fil.htm.

(b) The Contractor shall provide a preference in hiring to an eligible employee to the extent practicable for work under this contract who has been, or will be, involuntarily terminated (except if terminated for cause), and (3) who is qualified for a particular job vacancy with the Department or one of its contractors, with respect to work under its contract with the Department at the time the particular position is available.

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

(d) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403 expected to exceed $500,000).

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

(a) Definitions. As used in this clause, "Army Forces service medallion veteran," "disabled veteran," "active duty wartime or campaign badge veteran," and "recently separated veteran," have the meanings given in FAR 21.2301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually or on such other dates, as required by the Secretary of Labor, on United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(c) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, this provision of this clause for the Contractors employees who are members of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-7.14) is applicable to contractors in the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(d) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:

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

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

(f) The Contractor shall, in all solicitations or advertisements for employees placed by or through the Contracting Officer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:

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

(g) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-7.14) is applicable to contractors in the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(h) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:

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

(i) Employment.

(j) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:

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

(k) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to:

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

(l) Employment.

(m) Employment.

(n) Employment.

(o) Employment.

(p) Employment.

(q) Employment.

(r) Employment.

(s) Employment.

(t) Employment.

(u) Employment.

(v) Employment.

(w) Employment.

(x) Employment.

(y) Employment.

(z) Employment.
(g) The Contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

6. EQUAL OPPORTUNITY FOR VETERANS (JULY 2014)

(a) Definitions. As used in this clause—

(1) Any item of supply that is—

(ii) Construction;

(b) Contract/subcontract provisions. The Contractor shall insert the requirements of this clause, including this paragraph (b), in each subcontract.

(c) Notice to E-Verify Operations. The Contractor shall notify E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program.

(d) Data privacy. The Contractor shall ensure that all data is transmitted securely and that all data is protected in accordance with the E-Verify program.

(e) Electronic employment eligibility verification. The Contractor shall use E-Verify to initiate employment eligibility verification of—

(i) All new employees;

(ii) New hires who are not E-Verify enrollees;

(iii) Employees assigned to the contract;

(f) Other requirements. The Contractor shall ensure that all other requirements of this clause are met.

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

(Applies to contracts equal to or greater than $10,000)

Federal contractors and subcontractors are required to inform employees of their rights under the National Labor Relations Act (NLRA), the primary law governing relations between unions and employers of private sector. See 29 CFR Part 471. The notice, prescribed in the Department of Labor’s regulations, informs employees of Federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other concerted activity, including the right to refrain from such activity. The notice also provides employees with examples of illegal conduct by employers and unions, and it provides contact information to the National Labor Relations Board (NLRB) for reporting such conduct. Federal contractors and subcontractors are required to post the notice conspicuously in public areas where employees may be directed by the Secretary of Labor as a means of enforcing such provisions, to offer employees a link to the Department of Labor’s Web site that contains the full text of the poster. The link uses for notices to employees about terms and conditions of employment, a link to the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such notice can change in languages in may be made as shall be appropriate to identify properly the parties and their undertakings.

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

Applies To Contracts That Exceed $10,000 In Value

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in a conspicuous form, and containing such contents required to be posted by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.20(d) and (f).

(b) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor’s plants and offices where employees covered by the NLRA are customarily employed, and is customarily used for notices to employees about terms and conditions of employment, to the link to the Department of Labor’s Web site that contains the full text of the poster. The link to the Department’s Web site is posted on or near the poster.

(c) Employees are required to comply with the requirements of this clause electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site the Contractor is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor’s Web site that contains the full text of the poster.

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

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be required to furnish or substituted in accordance with 29 CFR 471.13 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

9. EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)

(a) Definitions. As used in this clause—

(i) A commercial item as defined in paragraph (1) of the definition at 21 CFR 1.102;

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

(c) Does not include bulk cargo, such as agricultural products and petroleum products. Per 46 CFR 525.1(c), "bulk cargo" means cargo that is sold in loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or SeaBear barges, is subject to mark and count bind, therefore, is not bulk cargo.

"Employee assigned to the contract" means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands) who is directly performing work, in the United States, under a contract that is required to be included in the clause prescribed at 22 1303. An employee is not considered to be directly performing work under a contract if the employee’s employment is incidental to the performance of work under the contract.

"Equal opportunity for veterans" means and employer will not make discrimination based on service in the Armed Forces, including service in the Armed Forces (except for a period before 1977).

"United States", as defined in 8 U.S.C. 1101(a)(38), means the States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

(1) The Contractor shall enroll as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

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

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

(iii) Notify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is a Prime Contractor or another subcontractor at the time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) All new employees;

(ii) New hires who are not E-Verify enrollees;

(iii) Employees assigned to the contract;

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

(v) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as an E-Verify Contractor, 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

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government; or the Federal government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency, the Contractor may choose to verify only employees assigned to the contract, whether employees are hired 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).

(4) To verify employees assigned to the contract, the Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

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

(ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program.

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program.

(6) If 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.

(7) The Contractor shall maintain an enrollment record of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, for the duration of the contract.

(8) Upon termination of the contract, the Contractor shall immediately transfer all records to the new contractor.

(d) Work site. Information on registration and use of the E-Verify program can be obtained via the internet at the E-Verify Web site.” (www.dhs.gov/E-Verify).

(e) Additional enrollment. The Contractor can be required to enroll new employees by the E-Verify program.

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

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

(ii) Who has been granted and holds an active U.S. Government security clearance for access to federal facilities and/or classified information (or, in secret code areas, classified information in accordance with the National Industrial Security Program Operating Manual); or

(iii) For whom the Contractor has applied in writing for a permanent or temporary secret, or top secret, clearance.

(g) Federal contractors shall offer to enroll in the E-Verify program at no cost to the Contractor, which includes the use of employee data, at any time, whether or not the Contractor is under contract.

(h) If the Contractor is a Prime Contractor or another subcontractor at the time of contract award, the Contractor shall enroll as a Federal Contractor in E-Verify as soon as practicable after the date of contract award.
11. SECURITY (OCT 2013) (DEVIATION)

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 the protection of 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 provided in this contract, the Contractor shall, upon completion or termination of this contract, return to DOE any classified material or special nuclear material in the possession of the Contractor or in the possession of any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified material is required after the completion or termination of the contract, the Contractor shall identify the items and classification level for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security protection of such classified material shall remain unchanged. Special classified material shall not be retained after the completion or termination of the contract.

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

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

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

Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure, and that is marked to indicate its classified status when it is removed from the Restricted Data category.

Definition of National Security Information. The term "National Security Information" means information that has been determined pursuant to 10 CFR Part 707, Classified National Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when it is removed from the Restricted Data category.

Definition of Special Nuclear Material. The term "special nuclear material" means: (1) Plutonium, uranium enriched in the isotopes 233 or in the isotope 235, and any other material removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954]; (2) any other material artificially enriched by any of the foregoing, but does not include special nuclear material.

In addition to a review, each candidate for a DOE access authorization must undergo a drug testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to random or for-cause drug testing for up to three years. If employees fail to pass the drug test, they will not be employed at DOE and will be required to undergo further evaluation and testing as necessary.

In the performance of work under this contract, the contractor or subcontractor shall comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII, and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questions.

In addition to a review, each candidate for a DOE access authorization must undergo a drug testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to random or for-cause drug testing for up to three years. If employees fail to pass the drug test, they will not be employed at DOE and will be required to undergo further evaluation and testing as necessary.

The Contractor shall carry out all reviews in accordance with the requirements established by the DOE Office of the General Counsel, including the review of proposals made by the Contractor to avoid or mitigate foreign influence.

Any employment applications seeking personal information (including, but not limited to, the applicant's criminal history or immigration status) shall include in the written vacancy announcement a notice to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted. In addition, the Contractor shall ensure that all information determined to require protection against unauthorized disclosure under either the Atomic Energy Act of 1954, as amended, and the “National Security Information” (classified under Executive Order 12958 or prior Executive Orders)”.

The Contractor shall not use any personal information (including, but not limited to, the applicant's criminal history or immigration status) for purposes of employment or training purposes.

The Contractor shall establish and implement procedures to ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a contractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is classified pursuant to the Counterintelligence Evaluation Program regulations at 10 CFR 707, the decision to classify shall be made by the DOE Contracting Officer, and the classification decision shall be made by the “Contracting Officer” means the DOE Contracting Officer. When this clause is included in a subcontract, the term “Contracting Officer” shall mean Subcontractor and the term “contract” shall mean subcontract.

12. CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to the handling of classified information or classified materials. As used in this section, “information” means facts, data, or knowledge itself; “document” means the physical medium containing the information, whether in paper form or any other form; “controlled” means that dissemination, transmission, or access to the information is to be limited to those persons who have a need to know and have been properly cleared to receive the information. All documents which contain or reveal information, regardless of its physical form or characteristics. Classified information is reviewed and evaluated in accordance with the regulations governing the classification and declassification of the information. All documents which contain or reveal information, regardless of its physical form or characteristics. Classified information is reviewed and evaluated in accordance with the regulations governing the classification and declassification of the information. Classified documents or material may be released to a non-sensitive audience when such release is approved by the DOE Office of the General Counsel, including the review of proposals made by the Contractor to avoid or mitigate foreign influence.

The Contractor shall not use any personal information (including, but not limited to, the applicant's criminal history or immigration status) for purposes of employment or training purposes.

The Contractor shall establish and implement procedures to ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a contractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is classified pursuant to the Counterintelligence Evaluation Program regulations at 10 CFR 707, the decision to classify shall be made by the DOE Contracting Officer, and the classification decision shall be made by the “Contracting Officer” means the DOE Contracting Officer. When this clause is included in a subcontract, the term “Contracting Officer” shall mean Subcontractor and the term “contract” shall mean subcontract.
14. TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

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

(a) Unless otherwise exempt, the Contractor shall notify the contractor, in writing, of its intent to ship any materials, or transport any equipment, materials, or commodities, in an ocean vessel to or from the United States.

(b) The Contractor shall notify the Procurement Representative of any material that may be transported in ocean vessels (computed in accordance with 40 CFR 372.65; listed in 40 CFR 373.10; or the equivalent). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessels:

(1) Contingency operations;

(2) Furnished to, or for the account of, any foreign nation without provision for international transportation;

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

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

(c) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(1) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(2) Furnish the contractor with the complete list of items when it subcontracts for items for f.o.b. destination shipment;  or

(3) Furnish to the contractor or the Government, in the event that the contractor fails to comply with the requirements of section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate filing form) has been EPA.

(4) Any such request shall be in writing.

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

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

(2) Furnished to, or for the account of, any foreign nation without provision for international transportation; or

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

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

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed in accordance with 40 CFR 372.65; listed in 40 CFR 373.10; or the equivalent) for which the contractor has been paid in full for the Ocean Freight Revenue of a U.S.-flag commercial vessel.

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

15. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

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

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or

(2) Other natural material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the specific activity per item is equal to or exceeds 0.002 microcuries.

(b) The laboratory Procurement Representative shall maintain a record of the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary health and safety precautions. See FAR 23.601.

(c) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material, the information shall not be required to be submitted again until the next revision of MIL-R-13163 at the date of that 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.
(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a contract, the law of Illinois shall apply. To the extent that Federal law does not exist and State law could become applicable to this contract, the law of Illinois shall apply.

(d) The offeror's subcontracting plan shall include the following:

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

"Commercial item" means a subcontracting plan that includes (i) goals that covers the offeror's fiscal year and that apply to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line), (ii) a description of the method used to determine the share of indirect costs to be incurred with subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with subcontracting goals.

The offeror's planned subcontracting in support of the specific contract, except indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

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

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor for the purpose of supplying supplies or services required for performance of the contract or subcontract in accordance with 43 U.S.C. 1626(e)(2). This definition also includes Indian-owned economic enterprises that meet the requirements of the Indiana Native Claims Settlement Act.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall separately address subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

(iii) The subcontracting plan shall be negotiated and submitted to the Contracting Officer.

(iv) The subcontracting plan shall include the following:

(A) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated and submitted to the Contracting Officer.

(B) The subcontracting plan shall be negotiated and submitted to the Contracting Officer.

(C) The subcontracting plan shall be negotiated and submitted to the Contracting Officer.

(D) The subcontracting plan shall be negotiated and submitted to the Contracting Officer.

(E) The subcontracting plan shall be negotiated and submitted to the Contracting Officer.

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and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s list of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors is excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

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

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is not a small business subcontract. Once a subcontractor’s commercial plan has been approved by the Government, the contractor shall not require another subcontracting plan from the same Contractor while the plan remains in effect, except when the contractor has been notified by the Government that a new plan is required.

(6) Notice shall be given to the contractor who is performing work for more than one executive agency, the contractor shall immediately notify the next highest tier subcontractor, or the contractor, as the case may be, of all relevant information concerning the dispute.

21. NOTICE TO THE LABORATORY OF LABOR DISPUTES (OCT 1999)

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

(B) The contractor agrees, if the contractor is performing work for more than one executive agency, the contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial plans were received.

(C) The authority to acknowledge or reject SSRS for commercial plans resides with the Contracting Officer who approved the commercial plan.

22. 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 51.403-4, on the date of agreement on price or the date of award, whichever is later, the contractor shall include a provision in the subcontract requiring the subcontractor to submit to the contractor, within a reasonable time after the date of agreement on price or the date of award, whichever is later, certified cost or pricing data, including data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

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

(a) Upon receipt of accelerated payments from the Government, the contractor shall make prompt payment to the subcontractor, as permitted by this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the payment terms of this contract. However, the contractor shall provide a written certification of the amount and nature of any contingencies included in the price, unless an exception under FAR 51.403-1 applies.

(b) The subcontractor agrees that the contractor shall not be liable to any subcontractor for any acceleration of payments under this contract.
(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data.

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

(3) Any of these parties furnished data of any description that were not complete, accurate, and current as certified in the Certificate of Current Cost or Pricing Data or were not submitted before the ‘as of’ date specified in the Certificate of Current Cost or Pricing Data.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract cost or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

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

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if complete, accurate, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; or

(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.

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

(c) The contractor must submit any “proposal for adjustment” (hereafter referred to as proposal) for adjustment to the Contracting Officer within 30 days after the last day a change order, or delivery order. The notification shall identify the revised cost of the subcontractor and shall include verification that the proposal will add value as related to the work to be performed by the lower-tier subcontractor(s).

(1) The Contractor shall notify the Contracting Officer in writing if —

(a) The Contractor proposes, billed, or claimed excessive pass-through charges.

(b) The Contractor is a sole source supplier or otherwise is in a superior bargaining position and thus the price of the contract would not have increased in the amount to be offset even if the negotiated price had been modified even if complete, accurate, and current certified cost or pricing data had been submitted.

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

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

(b) If any price, including profit, fee, or profit and fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; or

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract cost or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

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

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if complete, accurate, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; or

(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.

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

(c) The contractor must submit any “proposal for adjustment” (hereafter referred to as proposal) for adjustment to the Contracting Officer within 30 days after the last day a change order, or delivery order. The notification shall identify the revised cost of the subcontractor and shall include verification that the proposal will add value as related to the work to be performed by the lower-tier subcontractor(s).

(1) The Contractor shall notify the Contracting Officer in writing if —

(a) The Contractor proposes, billed, or claimed excessive pass-through charges.

(b) The Contractor is a sole source supplier or otherwise is in a superior bargaining position and thus the price of the contract would not have increased in the amount to be offset even if the negotiated price had been modified even if complete, accurate, and current certified cost or pricing data had been submitted.
30. EXCUSABLE DELAYS (OCT 1999)

(a) Except for defaults of subcontractors at any tier, the contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the contractor. Examples of these causes are (1) acts of God or of the Government, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes and unusually severe weather, (9) the strike or work stoppage of a labor organization, (10) labor disputes that cannot be avoided because of the control of both the contractor and subcontractor, and (11) the contractor shall not be in default, unless—

(1) The subcontracted supplies or services were obtained from other sources; or
(2) The Laboratory ordered the contractor in writing to purchase these supplies or services from another source.

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

(1) The subcontracted supplies or services were obtained from other sources; or
(2) The subcontractor failed to comply reasonably with this order.

(c) If the failure to perform is otherwise provided in the contract.

31. INSPECTION OF SUPPLIES—COST-REIMBURSEMENT (MAY 2001)

(a) Definitions. As used in this clause—

“Contractor’s managerial personnel” means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;
(2) All or substantially all of the Contractor’s operation at a plant or separate location where the contract is being performed; or
(3) A separate and complete major industrial operation connected with performing this contract.

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

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

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

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

(e) Unless otherwise specified in the contract, the Laboratory shall accept supplies as promptly as possible after delivery, and it shall not require acceptance or inspection of supplies delayed 60 days after delivery, unless earlier specified.

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

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

(1) By contract or otherwise, issue a written order for the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract,
(2) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
(3) Terminate the contract for default.

(h) Failure to agree on the amount of increased cost to be charged to the Contractor or the equitable reduction in the fixed fee shall be a dispute.

(i) Notwithstanding paragraphs (f) and (g) of this clause, the Laboratory may at any time require the Contractor to correct or replace, without the cost to the Laboratory, nonconforming supplies for any of the following reasons:

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor’s managerial personnel;
(2) The conduct of one or more of the Contractor’s employees selected or retained by the Contractor after any of the Contractor’s managerial personnel has reasonable grounds to believe that the employee is habitual, willful, careless, or unqualified.

(j) If the failure to perform is otherwise provided in the contract.

32. PERMITS OR LICENSES (OCT 1999)

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

33. SUBCONTRACTS (OCT 2010)

(a) Definitions. As used in this clause—

“Appropriate purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the ‘written consent for the Contractor to enter into a particular subcontract.’

“Subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontractor’s service. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) 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.

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

(1) is of the cost-reimbursement, time-and-materials, or labor-hour type; or
(2) is fixed-price and exceeds—

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

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall provide the Laboratory a written consent before placing the following subcontracts:

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

(a) A description of the supplies or services to be subcontracted.
(b) Identification of the type of subcontract to be used.
(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 contract provisions.
(f) The Laboratory’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
(g) A narrative of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decision used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Laboratory in writing of any subcontract procurements, and, if the Contractor failed to comply reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

(3) If the Contractor has an approved purchasing system and consent is not required under paragraphs (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Laboratory, if the Contractor or a subcontractor paid using government funds, of any subcontract or modification thereof placed under this contract to a successor operator of the Laboratory or any entity funded under the Recovery Act.

(e) The Laboratory reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 4.43.

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

34. ASSIGNMENT (OCT 1999)

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

35. SUBCONTRACTS FOR COMMERICAL ITEMS (APR 2015)

(a) Definitions. As used in this clause—

“Commercial item” means an item described in Federal Acquisition Regulation 2.101.

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

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

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

(i) 52.204-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (1)(ii)’’even if the subcontract exceeds $50,000 and has a performance period of more than 120 days, in altering this clause to identify the appropriateness of the provision of the Code of Federal Criminal Offenses Act or of Federal law with the provision of the Code of Federal Criminal Offenses Act or Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Office.

(ii) 52.204-13, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5, if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (1)(5) “small business concern” means a concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not a business concern that is not located in the United States and that is not located

(iv) 52.219-9, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5, if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility) for the subcontractor, the subcontractor shall offer subcontracting opportunities that offer subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $650,000 ($1.5 million for construction of any public facility) for the subcontractor, the subcontractor shall offer subcontracting opportunities that offer subcontracting opportunities.
Protection of government property — management of high-risk property and classified risk of loss of Government property.

(b) Title to property. Except as otherwise provided by the Laboratory Procurement Official, title to property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Laboratory reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Laboratory Procurement Official shall direct. Title to other property, the cost of which is reimbursable as a direct item of cost under this contract, shall pass directly from the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any property.

(c) Identification. To the extent directed by the Laboratory Procurement Official, the Contractor shall identify Government property containing information of or belonging to another government or commercial contractor. Before removing, replacing, or diverting any of the listed or classified property, the Contractor must:

(i) Obtain the Laboratory Procurement Official's written approval.

(ii) Withhold a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

36. PROPERTY (JAN 2013)

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

(b) Title to property. Except as otherwise provided by the Laboratory Procurement Official, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Laboratory reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Laboratory Procurement Official shall direct. Title to other property, the cost of which is reimbursable as a direct item of cost under this contract, shall pass directly from the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any property.

(c) Identification. To the extent directed by the Laboratory Procurement Official, the Contractor shall identify Government property containing information of or belonging to another government or commercial contractor. Before removing, replacing, or diverting any of the listed or classified property, the Contractor must:

(i) Obtain the Laboratory Procurement Official's written approval.

(ii) Withhold a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

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

(f) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposal of high-risk property and classified materials throughout the lifecycle of the property and materials contained, in accordance with safeguards mandated by the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (Dep't of Energy and Dep't of Energy Property Management Regulations (41 CFR chapter 108)), and other applicable Regulations.

(g) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive nuclear, chemical, biological, control, medical, radiological, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(h) Risk of loss of Government property.

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

(A) Violation of a written order of the Laboratory or the Laboratory Procurement Official.

(B) Failure of the Contractor's managerial personnel to take all reasonable steps to prevent the occurrence of an appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause.

(C) Failure of contractor personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (f) of this clause. In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with paragraph (f) of this clause, the Contractor's compensation to the Government shall be determined as follows:

1. For damaged property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement of the damaged property that are approved by the Laboratory Procurement Official, and which are associated with the disposition of destroyed property.

2. For lost property, if the Contractor is unable to state with reasonable certainty the fair market value of the property does not exist, the Laboratory Procurement Official is required to determine the value of such property, consistent with all relevant facts and circumstances.

3. The portion of the cost of insurance obtained by the Contractor that is allocable to coverage under paragraph (f) of this clause shall not be included.

4. Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor shall:

(I) Shall immediately inform the Laboratory Procurement Official of the occasion and extent of such damage, destruction, or loss.

(ii) Shall take all reasonable steps to protect the property remaining, and shall promptly inform the Laboratory of the nature of damage or loss that has occurred.

(iii) Shall repair or replace the damaged, destroyed, or lost property in accordance with the Laboratory's written direction.

(iv) The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall permit the Government to have access to the property, regardless of whether such access is onsite or offsite.

(v) Property management for Government use only. Government property shall be used only for purposes of this contract.

(vi) Property Management System.

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

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

(C) Property Inventory.

(i) Unless otherwise directed by the Laboratory Procurement Official, the Contractor shall conduct a joint reconciliation of the property inventory at the completion of the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory at the completion of the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory at the completion of the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory at the completion of the performance of this contract, the Contractor shall conduct a joint reconciliation of the property inventory at the completion of the performance of this contract.

(ii) A separate and complete major industrial operation in connection with the performance of this contract; or

(iii) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(iv) A separate and discrete major task or operation in connection with the performance of this contract.

(D) The Contractor shall include this clause in all cost reimbursable subcontracts.

37. KEY PERSONNEL (DEC 2000)

(a) The personnel listed in Clause Key Personnel, are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

1. Notify the Laboratory Procurement Official reasonably in advance;

2. Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the substitution and a determination that the proposed substitution is adequate;

3. Obtain the Laboratory Procurement Official's written approval.

(b) The Contractor shall not substitute any personnel, with the consent of the Laboratory, be amended from time to time during the course of the contract to add or delete personnel.

38. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014)

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.330) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for liquidated damages on any item resulting from the failure to comply with the terms of this paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of 1 1/2 times the basic rate of pay for the number of hours in excess of the standard workweek of 40 hours without the prior written approval of the Contracting Officer. The liquidated damages shall be determined by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. Chapter 37).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from amounts due to the Contractor the amount of unpaid wages and liquidated damages as required by this paragraph and paragraph (a) of this clause. The Contractor or subcontractor shall not be liable for any losses resulting from such withholding.

(d) Payrolls and basic records. No contractor or subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract...
and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee; Social Security number; labor hours worked during each pay period; labor grades; race, color, sex, and national origin of each employee; and the initial rate and cumulative wages paid per week for each employee. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contractor or the Office of Labor to inspect, copy, or transcribe records maintained under paragraphs (a)(1) or (a)(2) of this clause. The Contractor or subcontractor shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

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

39. INTEGRITY OF UNIT PRICES (OCT 2010)

This clause applies to all subcontracts that exceed $150,000. Each bid or proposal, as well as any subcontract or contract entered into after the bid or proposal, shall contain representations and stipulations required by this clause.

(a) Definitions. “Cost of components” means—

(1) That the Contractor shall correct or reperform any defective or nonconforming work. The Laboratory Procurement Officer may, by contract or otherwise, correct or reperform the work at the Contractor’s expense, or may require the Contractor to correct or reperform the work, or may require the Contractor to correct or reperform the work and to pay the Laboratory, or to pay the Government the cost of any corrective or reperformed work.

(2) That the Laboratory does not correct or reperform, or that it is not permitted to correct or reperform, the deficient work.

(b) The Contractor shall deliver only domestic end products except to the extent that it specified foreign end products in the Representations and Certifications for the solicitation entitled “Buy American Certificate.”

43. CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $150,000 (MAY 2014)

Except as otherwise approved, in writing, by the Laboratory Procurement Officer, the Contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts entered into in connection with this contract.

(a) Except as provided in subparagraph (2) immediately following, the contractor shall provide the manufacturer’s comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Laboratory may require under this contract.

(2) The contractor agrees to submit for the Laboratory’s approval to the extent and in the manner required by the Laboratory, any other insurance that is maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement.

(b) The contractor shall be reimbursed--

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the Limitation of Funds or Limitation of Cost clause of this contract. These liabilities may arise out of the performance of this contract, whether or not caused by the negligence of the contractor or the contractor’s agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Laboratory. The contractor shall pay all judgments and settlements approved in writing by the Laboratory.

(c) The contractor shall not be entitled to reimbursement for any insurance provided by the contractor.

(d) If any suit or action is filed or any claim is made against the contractor, the cost and expenses of defending such suit or action shall be reimbursed for the contractor, or the contractor’s directors, officers, managers, superintendents, or other representatives who have supervision or direction of:

(i) All or substantially all of the contractor’s business;

(ii) All or substantially all of the contractor’s operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

The provisions of paragraph (e) of this clause shall not restrict the right of the contractor to be reimbursed for the cost of insurance maintained by the contractor in connection with the performance of this contract that the contractor is required in accordance with the clause entitled “Cost of components” to maintain or to purchase from the agent or insurance company provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the contractor, the cost and expenses of which may be reimbursable to the contractor under this contract, and the risk of which is insured by the insurance required for the contractor by this clause, the contractor shall--

(1) Immediately notify the Laboratory and promptly furnish copies of all pertinent papers to the Laboratory;

(2) Authorize Laboratory or Government representatives to collaborate with counsel for the contractor, or the contractor’s agents or representatives, in the defense of suit or action; and the contractor shall pay all amounts of the liability claimed exceeds the amount of coverage; and

Required: The contractor shall settle or defend the claim and to represent the contractor or in to take charge of any litigation, if required by the Laboratory or the Government, when the liability is not insured or covered by bond. The contractor may, at its own expense, be associated with the Laboratory or Government representatives in any such claim or litigation.
(a) The Contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or purported to be levied or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and contracted for on an allowable item of cost, which the contractor believes is not applicable to the contractor or (b) which the contractor believes, for any reason, to be invalid, regardless of whether the reason to believe, or the Laboratory has advised the contractor, is or may be invalid or inapplicable, the contractor shall promptly deliver to the Laboratory, in writing, a list of the items, unless authorized in writing by the Laboratory. The Laboratory or any State or local tax, fee, or charge paid with the approval of the Laboratory, or on the basis of advice from the Laboratory that such tax, fee, or charge is applicable to or recoverable is an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge is invalid or nonapplicable, if the contractor has taken or fails to take all reasonable and appropriate actions necessary to assure full credit for any such tax, fee, or charge).

(b) The contractor agrees to take such action as may be required or approved by the Laboratory to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take all action required or approved by the Laboratory to seek recovery of any payments made, including assignment to the Laboratory or transfer or disposition of all rights to an allowance for the amount of such payments and interest. The contractor shall agree to take such action as may be required or approved by the Laboratory or the Government to join with the contractor in any proceedings for the recovery thereof or for sue to recover in the name of the contractor. If the laboratory directs the contractor to institute litigation against the assignee of or recovery of payment in accordance with the contractor's request, the contractor shall pay the contractor's costs, as provided in this paragraph (b), and the costs and expenses incurred by the contractor shall be added to the contract price charged to the United States or in the contract price charged to the United States Government.

(c) The Laboratory shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Laboratory.

46. 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—

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

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

(b) The Laboratory Procurement Official shall terminate by delivering to the Contractor a Notice of Termination specifying whether the default is of the whole or of part of the contract, the convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the default was not in default, or the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor as set forth in the Exculpatory Clause, the rights and obligations of the parties shall be the same as if the termination was for the convenience of the Government.

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

(i) Stop work as specified in the notice.

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

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

(iv) Deliver to the Government, and if not required by the Government for administrative purposes, all materials, equipment, supplies, plant, and other tangible property owned by the Contractor and required for the work terminated.

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

(vi) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the use of which the Contractor will have been reimbursed under this contract.

(vii) Complete performance of the work not terminated.

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

(ix) Use its best efforts to sell, as directed or authorized by the Laboratory Procurement Official, all material, equipment, supplies, plant, and other items owned by the Contractor and located at the site of this contract, or stored elsewhere by the Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or facilities to the Laboratory or any other person, for the purpose of improper or improper or unauthorized use or protection, preservation, or disposition of the terminated settlement proposal because of retention or other disposition of termination inventory.

(x) Such settlements); and

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


(kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any person who has been employed to work as a contractor on or partner in or agent of a prime Contractor.

Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States or any Federal Agency.

"Subcontractor," as used in this clause, means a contract or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

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

"Prime Contract," as used in this clause, means a contract or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Subcontractor," as used in this clause, means a contractor or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States or any Federal Agency.

"Contractor" as used in this clause, means a person who has been employed to work as a contractor on or partner in or agent of a prime Contractor.

"Subcontractor," as used in this clause, means a contract or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

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

"Prime Contract," as used in this clause, means a contract or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States or any Federal Agency.

"Subcontractor," as used in this clause, means a contract or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

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

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"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States or any Federal Agency.

"Subcontractor," as used in this clause, means a contract or subcontracting agreement entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from payments due that contractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subsection (c)(1) of this clause be paid over to the Government unless the Government has already offset those monies under subsection (c)(d) of this clause.

(b) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment," the contractor, as soon as possible but not later than ninety (90) days after the expiration of this clause shall be paid over to the Government unless the Government has already offset those monies under subsection (c)(d) of this clause.

(c) The contractor agrees to incorporate the substance of this clause, including paragraph (b)(1), in all subcontracts under this contract which exceed $150,000.

48. RESTRICTIONS ON SUBCONTRACTORS TO THE GOVERNMENT (SEP 2006)

Applicable to Contracts Which Exceed $100,000

(a) The contractor shall not enter into any agreement with an actual or prospective subcontractor, nor act in any manner which has or results in the effect of restricting sales by subcontractors directly to the Government or the contractor, the Federal Government or subcontractor, nor act in any manner which has or results in the effect of restricting sales by subcontractors directly to the Government or the contractor, or the Federal Government or subcontractor, or act in any manner which has or results in the effect of restricting sales by subcontractors directly to the Government or the contractor, or the Federal Government or subcontractor, or otherwise act in any manner which has or results in the effect of restricting sales by subcontractors directly to the Government or the contractor, or the Federal Government or subcontractor, or any other person or entity, directly or indirectly, of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

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

(c) Negotiations of costs and acceptability of cost allocation methods shall be determined in accordance with the clause entitled "Allowable Cost and Payment".

(d) The contractor shall make permanent the terms of any renegotiation of negotiated overhead rates provided in the contract and shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Failure to establish final overhead rates for any period, the contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing rates applicable to the Labor Secretary, subject to the contractor, or to billing 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51. 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 in accordance with the Schedule and all obligations under this contract except those excess costs incurred during the course of the contract or as a result of termination.

(b) The Schedule specifies the amount presently available for payment by the Laboratory and allotted to this contract, the item covered, the Laboratory's share of the cost if it is a cost-sharing contract, and the period in which the Laboratory is expected to allot the estimated amount. The parties contemplate that the Laboratory will allot additional funds incrementally to the cost specified in the Schedule whenever it has reason to believe that the cost it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total cost so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(c) Sixty days before the end of the period specified in the Schedule, the contractor shall notify the Laboratory Procurement Official in writing that the contractor estimates that funds available in excess of (1) the amount allotted by the Laboratory or (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share, will be required to continue performance for the period specified in the Schedule. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) The contractor shall notify the Authorized Laboratory Procurement Official in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

53. ALLOWABLE COST AND PAYMENT (JUN 2011)

(a) Invoicing.

(1) The Laboratory will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every quarter; provided that, if the manner in which the Laboratory makes payments to the Contractor would exceed 75 percent of the total amount allotted to the contract, the Contractor may submit an appropriate request to the Authorized Laboratory Procurement Official requesting an exception to this clause—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor estimates will be in excess of (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 represents that by making the request for an exception, the Contractor will assure prompt payment for items or services purchased directly for the contract.

(ii) Any costs the contractor incurs before the increase that are in excess of (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Laboratory's share of the estimated cost specified in the Schedule.

(b) Reimbursable costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to personnel, deferral profit sharing, and employee stock ownership plan ('ESOP') contributions, the following costs are allowable—

(i) The costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (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.

(ii) The contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (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.

(iii) An adequate indirect cost rate proposal shall include the following data unless specifically deleted by the Authorized Laboratory Procurement Official:

(A) Summary of all claimed indirect expense rates, including pool, base, and project-wide rates, and the corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule. The amounts then allotted to the contract by the Laboratory plus the contractor's corresponding share, until the authorized Laboratory Procurement Official will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available in excess of (1) the amount allotted by the Laboratory or (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share, will be required to continue performance for the period specified in the Schedule.

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

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

(1) The laboratory is not obligated to reimburse the contractor for costs incurred in excess of (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 in accordance with the Schedule and all obligations under this contract except the costs specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(d) If the estimated cost specified in the Schedule is increased, any costs the contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the extent as specified in the Authorized Laboratory Procurement Official's notification of an increase in the estimated cost. The Contractor may submit to an authorized representative of the Laboratory Procurement Office (except as otherwise stated in the Schedule) an invoice for payment for items or services purchased directly for the contract.

(e) Change orders shall not be considered an authorization to exceed the estimated cost to the Laboratory specified in the Schedule, unless they contain a statement increasing the amount allotted by the Laboratory to this contract.

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

52. 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 and all obligations under this contract except the costs specified in the Schedule. The contractor shall support its proposal with adequate supporting data.

(b) The contractor shall notify the Authorized Laboratory Procurement Official in writing whenever it has reason to believe that—

(1) The cost the contractor expects to incur under 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 or, (2) the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

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

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

(1) The Laboratory is not obligated to reimburse the contractor for costs incurred in excess of (1) the estimated cost specified in the Schedule, or (2) if this is a cost-sharing contract, the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(2) The contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (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, plus the contractor's corresponding share, until the authorized Laboratory Procurement Official will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available in excess of (1) the amount allotted by the Laboratory or (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share, will be required to continue performance for the period specified in the Schedule.

(3) The contractor shall notify the Authorized Laboratory Procurement Official in writing whenever it has reason to believe that—

(1) The costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule or, (2) the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

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

(e) No notice, communication, or representation in any form other than that specified in the Schedule, shall be applicable and the clause entitled "Limitation of Funds" shall be inapplicable.

(f) Change orders shall not be considered an authorization to exceed the estimated cost to the Laboratory specified in the Schedule, unless they contain a statement increasing the amount allotted by the Laboratory to this contract.

(g) If this contract is terminated or the estimated cost is not increased, the Laboratory and the contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.
(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.
(H) Schedule of direct costs by contract and subcontract and indirect cost expenses applied at claimed rates, as well as a subsidiary schedule of Government's participation percentages in each of the allocation base amounts.
(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract, and the applicable labor hour coefficients.
(II) Subcontract information listing of subcontracts awarded to companies for the prime or subcontractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor's name, address, and point of performance).
(K) 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.
L. Reconciliation of claims per IRS Form 941 to total labor costs distribution.
(M), (N), and (O) are to be completed as required by the contractor and the Government.
(P) Certification of final indirect costs (see 52.244-4, Certification of Final Direct Costs).
(Q) Contract closing information for contracts physically completed in the fiscal year, for contracts performed in the period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close.
(R) Schedule of costs approved for prior overpayments or underpayments. (S) Adjusted for prior overpayments or underpayments.
(T) Reduced by amounts found by the Laboratory Procurement Official not to constitute adjustment when the final rates are established. These billing rates—
(U) Within 120 days (or longer period if approved in writing by the Laboratory Procurement Official) after settlement of the final annual indirect cost rates for all contracts with the Contractor, the Government shall—
(V) The Contractor shall update the billings on all contracts to reflect the final rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (D)(2)(i) of this section, within 60 days after settlement of final indirect cost rates.
(W) The Contractor and the Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) any applicable constraints for which the rates apply, (iv) any specified indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or contracts. The understanding shall include advance approval requirements, pre-contract cost allowability limitations, and billing limitations.
(X) The Contractor shall update the billings on all contracts to reflect the final rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (D)(2)(i) of this section, within 60 days after settlement of final indirect cost rates.
(Y) The Contractor and the Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) any applicable constraints for which the rates apply, (iv) any specified indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or contracts. The understanding shall include advance approval requirements, pre-contract cost allowability limitations, and billing limitations.
(Z) The Contractor shall update the billings on all contracts to reflect the final rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (D)(2)(i) of this section, within 60 days after settlement of final indirect cost rates.
for a period of three years after final payment under this contract or otherwise disposed of in a manner such as may be agreed upon by the Government and the Contractor.

e. Reports. The Contractor shall furnish the Government, at its request, and at reasonable cost, reports and other documents concerning the work under this contract as the Contracting Officer may from time to time require.

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

g. Suspension. The Contractor further does not perform such labor, services, or supplies as to cause the contractor to enter into any of the subcontract or subcontracts described in clauses (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder, where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

h. Comptroller General. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to interview any of the records of the Contractor or subcontractor directly pertinent to any transactions related to this contract or a subcontract hereunder and to interview any employee regarding transactions in any such records.

i. Withdrawal. This paragraph may not be construed to prevent the Contractor or subcontractor to whom it is addressed from creating or maintaining any record that the Contractor or subcontractor does not maintain in the ordinary course of business, and which is not otherwise required under a law or a provision of law.

3. Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

58. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

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

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

59. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO PROTECT CONTRACTOR EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Foreign Intelligence Surveillance Act (as amended by section 3.908 of the Federal Acquisition Regulation).

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as established at 41 U.S.C. 4712.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

60. PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)

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

(1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

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

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

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40104(d), such as agricultural products and petroleum products.

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

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

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment, in each subcontract that-

(1) Exceeds $30,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

61. COMBATING TRAFFICKING IN PERSONS (MARCH 2015)

(a) Definitions. As used in this clause-

(1) “Forced Labor” means knowingly providing or obtaining the labor or services of a person-

(i) By threats of serious harm to, or physical restraint against, that person or another person;

(ii) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not comply, the person or another person would suffer serious harm or physical restraint; or

(iii) By means of forced labor as described in section 3.908 of the Federal Acquisition Regulation.

(2) “Involuntary servitude” includes a condition of servitude induced by means of-

(i) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not comply, the person or another person would suffer serious harm or physical restraint; or

(ii) The use or threatened use of force, violence, or coercion.

(3) “Severe forms of trafficking in persons” means-

(i) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(ii) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of involuntary servitude;

(iii) Peonage, debt bondage, or slavery.

(b) “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

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

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

(4) “Forced Labor” means knowingly providing or obtaining the labor or services of a person-

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of involuntary servitude; peonage, debt bondage, or slavery.

(3) “Involuntary servitude” includes a condition of servitude induced by means of-

(4) The systems and procedures the Contractor has established to ensure that it is fully informed of the specific basis for the party’s debarment, suspension, or proposed debarment.

(e) The systems and procedures the Contractor has established to ensure that it is fully informed of the specific basis for the party’s debarment, suspension, or proposed debarment.

(f) The requirements of paragraph (b)(7)(v) of this clause shall not apply to an employee who is-

(1) Legally permitted to remain in the country of employment and who chooses to do so; or

(2) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation.

(g) An employee who is not a national of the country in which the work is being performed shall not be paid return transportation or pay for the cost of return transportation.

(h) An employee who is not a national of the country in which the work is being performed shall not be paid return transportation or pay for the cost of return transportation.

(i) An employee who is not a national of the country in which the work is being performed shall not be paid return transportation or pay for the cost of return transportation.

(j) The requirements of paragraph (b)(7)(v) of this clause shall not apply to an employee who is-

(1) Legally permitted to remain in the country of employment and who chooses to do so; or

(2) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation.

(k) The Contractor shall not perform the work, the work document shall be provided to the employee at least five days prior to the work performance. The employer’s work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time and method of transportation arrangements, grievance procedures, and the content of applicable laws and regulations that prohibit trafficking in persons.

(l) The Contractor shall notify the Contracting Officer and the agency Inspector General immediately of-

(1) Any actions taken against a Contractor employee, subcontractor employee, or their agent pursuant to this clause.
(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in:

1. Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
2. Requiring the Contractor to terminate a subcontract;
3. Suspension of contract payments until the Contractor has taken appropriate remedial actions with respect to such violations;
4. Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined the Contractor non-compliance;
5. Declining to exercise available options under the contract;
6. Termination of the contract for default or cause, in accordance with the termination clause of this contract;
7. Suspension or debarment;
8. Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

1. Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program that the Contractor was in compliance with the plan and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations;
2. Aggravating factors. The Contractor failed to abide an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation.

1. The Contractor shall, at a minimum—
   (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the offense;
   (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
   (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 79, E.O. 13267, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
   (iv) Protect all employees or witnesses of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

2. The requirement for full cooperation does not foreclose any Contractor rights arising under law, the FARA, or the terms of this clause: It does not:
   (i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
   (ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
   (iii) Restrict the Contractor from:
      (A) Conducting an internal investigation; or
      (B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) Compliance plan.

1. This paragraph (h) applies to any portion of the contract that—
   (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
   (ii) Has an estimated value that exceeds $500,000.

2. The Contractor shall maintain a compliance plan during the performance of the contract that is—
   (i) To the complexity of the contract; and
   (ii) To the nature and scope of the activities to be performed for the Government, including the number of non-U.S. citizens expected to be employed, and the risk that the contract or subcontract will involve services or supplies that are susceptible to trafficking in persons.

3. Minimum requirements. The compliance plan must include, at a minimum, the following:
   (i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause from being performed, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Trafficking in Persons Report, www.state.gov/j/tip/.
   (ii) A process for employees reporting instances of human trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.
   (iii) A policy and a plan for the management of recruitment processes that excludes the use of recruitment fees to the employees, and ensures that wages meet applicable host-country legal requirements or existing practice.
   (iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
   (v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontractors, or subcontractor employees that have engaged in such activities.

(i) Posting.

1. The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each employee in writing.

2. The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(j) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

1. It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and
2. After having conducted due diligence, either—
   (A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in such prohibited activities; or
   (B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and remedial actions.

(k) Subcontracts.

1. The Contractor shall include the substance of this clause, including this paragraph (h), in all subcontracts and in all contracts with agents.
Research Misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include errors of judgment or differences of opinion. Research record means the record of all data or results that embody the facts resulting from research activities, including, but not limited to, laboratory notebooks, research proposals, research staff records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

By signing this contract, the Contractor certifies its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting any allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 3 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

The Contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

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

Site Access

Site access, including cyber access utilizing a laboratory account, by all non-U.S. citizens must be reviewed and approved by the Laboratory Director. All Site visit/assignment approval, if granted, must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for 30 days or less) or assignees (on site for more than 30 days in a calendar period). A certified host must be assigned for each visit or assignment. Form ANL-593 should be submitted as far in advance as possible (a minimum of 30 days for a sensitive assignment, 7 days for a non-sensitive country assignment or visit or sensitive visit).

For assignments (more than 30 days) involving a foreign national from a "Sensitive Country", and/or any project, facility, area, or security area of the Laboratory or access to a sensitive subject, at least 90 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 such cases, a specific security plan also must be submitted to the Foreign Travel and Assignments Office with the ANL-593 form requesting the visit by the Hosting Division. An indices check normally takes 30 days after completion of all required pre-clearance documents, but can take considerably longer (once obtained, an indices check is valid for two years).

For visits or assignments involving a foreign national from a “Terrorist Supporting Country”, (which currently include: Cuba, Iran, Libya, North Korea, Sudan, Syria), specific lab, contractor, and visit/assignment by the Secretary of Energy or his designees is required. This approval, if granted, shall be submitted 6 months after the proposed assignment. The time frames indicated above shall not constitute the basis for any equitable adjustment or claim to the contract price or performance/delivery period.

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

Access/Patrol/Area

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

64. EXPORT LICENSE AGREEMENT (AUG 2002)

The contractor understands that the materials and/or information being transmitted under the performance of this contract is subject to U.S. Government laws and regulations regarding export or re-export. This includes deemed exports which are any communication of technical data to a foreign national, whether or not on foreign soil. For administration of the export control laws, since controlled technical data (data) provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or workshops, or through computer networking is an export. If a foreign national observes equipment, transfers controlled technologies.

The contractor is encouraged to—

1. In the performance of this contract, the Contractor, when participating in the development of fundamental research and information resulting from fundamental research
2. Select, use, and adhere to appropriate voluntary consensus standards (VCSs), except
3. Participate as appropriate in development and review of those DOE Technical Standards
4. Flow down this requirement to subcontractor(s) at any tier to the extent necessary to ensure

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

The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nuclear nonproliferation objectives. Although much of the work Argonne and its employees undertake to further its research and technology development mission is exempt from U.S. export control regulations, the Laboratory must abide by all of the export control laws and regulations. The Contractor is responsible for maintaining a list of DOE controlled technologies and items. An export can occur through a variety of means, including oral communications, written documentation, or transfer of U.S. computer software to foreign nationals. Technology transfers to foreign nationals while they are visiting the United States does not constitute an export. However, while you are in another country are considered exports. You and the Laboratory can be held liable for improperly transferring controlled technology.

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

- Fundamental research and information resulting from fundamental research
- Published information and software (publicly available) education information
- Patient applications
- Information, technology, and/or commodities do not fall into one of these categories, please contact the Export Control Manager at Argonne to determine if a license is required prior to export. To further reduce the risk of the loss or compromise of technical information or technology when traveling abroad, keep the following guidelines in mind that without having acquired an export license prior to your trip, presentations and discussions must be limited to only those topics that are not on the Department of Energy’s Sensitive List and the Laboratory’s Export Control List.
- Export of controlled items or technologies unless they are in the public domain. Further elaboration, or additional details, may be considered an export of technologies and need an export license prior to release.

66. CONFLICTS IN DOCUMENTATION (MAY 2001)

Any discrepancy, inconsistency, or conflict in the SCHEDULE or in one or more of the documents identified in the Article entitled “Applicable Documentation” which can be reasonably ascertained as inconsistent, limited to, materials that are defective, suspect or counterfeit; materials that have been provided under false premises; and equipment or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include (but are not limited to): fasteners, hoist crane; hoses; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treating materials; and structural items; welding rod and electrodes; and computer memory modules.

The contractor’s warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation constitutes a violation of contract and results in the return of such information or items; at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.

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

(a) Definitions. As used in this clause—

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

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, or instant messaging.

(b) The Contractor is encouraged to—

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

   (i) For contractors, subcontractors, and employees who operate motor vehicles; or

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

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

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

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

68. INTEGRATION CLAUSE (MAY 2003)

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

69. TECHNICAL STANDARDS PROGRAM (FEB 2011)

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

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:

   Select, 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),

   Participate as appropriate in development and review of those DOE Technical Standards when the Contractor, or any DOE funds, is involved in performing any work for or on behalf of the Government;

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

   Report participation in VCS activities conducted in support of DOE missions and functions through the Laboratory Technical Standards Manager in The Office of Contract Administration (OCA). (Use Form DOE P 1300.2 (9/2009))

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

70. VEHICLE LIABILITY INSURANCE COVERAGE (AUG 2001)

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

71. LIMITATIONS PERIOD (MAY 2001)

Any action brought by the contractor for breach of contract, request for equitable adjustment, or any other claim arising under the contract must be identified in writing to the Laboratory Procurement Office. Such written notification must be received by the Laboratory Procurement Office at least two years prior to the expiration of the limitations period following the completion of work under the contract or after the cause of action has arisen, whichever occurs first, otherwise the contractor shall be barred from pursuing such action.

72. SUSPECT COUNTERFEIT PARTS (DEC 2007)

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

Types of material, parts, and components known to have been misreproduced include (but are not limited to): fasteners, hoist crane; hoses; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treating materials; and structural items; welding rod and electrodes; and computer memory modules.

The contractor’s warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation constitutes a violation of contract and results in the return of such information or items; at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.

73. ENVIRONMENTAL PROTECTION (MAY 2001)

In performing this contract, the Contractor shall comply with the requirements set forth in all applicable Federal and non-Federal environmental protection laws, codes, ordinances, Executive Orders, regulations, and directives.
# Suspect/Counterfeit Bolt Headmark List

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

### All Grade 5 and Grade 8 fasteners of foreign origin which do not bear any manufacturers’ headmarks:

<table>
<thead>
<tr>
<th>Grade 5</th>
<th>Grade 8</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image1" alt="Grade 5 bolt headmark" /></td>
<td><img src="image2" alt="Grade 8 bolt headmark" /></td>
</tr>
</tbody>
</table>

### Grade 5 fasteners with the following manufacturers’ headmarks:

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>J</td>
<td>Jinn Her (TW*)</td>
</tr>
</tbody>
</table>

### Grade 8 fasteners with the following manufacturers’ headmarks:

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

<table>
<thead>
<tr>
<th>MARK</th>
<th>MANUFACTURER</th>
</tr>
</thead>
<tbody>
<tr>
<td>KS</td>
<td>Kosaka Kogyo (JP)</td>
</tr>
<tr>
<td>RT</td>
<td>Takai Ltd. (JP)</td>
</tr>
<tr>
<td>FM</td>
<td>Fastener Co. of Japan (JP)</td>
</tr>
<tr>
<td>KY</td>
<td>Kyoei Mfg. (JP)</td>
</tr>
<tr>
<td>J</td>
<td>Jinn Her (TW)</td>
</tr>
<tr>
<td>UNY</td>
<td>Unytite (JP)</td>
</tr>
</tbody>
</table>

### Grade 8.2 fastener with the following headmark:

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

### Grade A325 fasteners (BENNETT DENVER TARGET ONLY) with the following headmarks:

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

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Headmarkings are usually raised – sometimes indented.  
*KEY: CA-Canada, JP-Japan, TW-Taiwan, YU-the former Yugoslavia*