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ARGONNE TERMS AND CONDITIONS
(For Cost-Reimbursement Contracts)

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1. DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

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

(b) Definition. "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or holds itself out as being able to obtain any Government contract or contracts through improper influence.

2. COVENANT AGAINST CONTINGENT FEES (MAY 2004)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, to the extent of the contract price, or otherwise recover, the full amount of the contingent fee.

3. EQUAL OPPORTUNITY (MAR 2007)

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

4. EMPLOYMENT REPORTS VETERANS (JUL 2014)

(a) Definitions. As used in this clause, "Army Forces service medal veteran," "disabled veteran," "active duty wartime or campaign badge veteran," and "recently separated veteran," have the meanings given in FAR 22.1203.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, or as otherwise provided by law.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled "Federal Contractor Veterans' Employment Report (VETS-100A Report)."

5. EQUAL OPPORTUNITY FOR VETERANS (JULY 2014)

(a) Definitions. As used in this clause, "active duty wartime or campaign badge veteran," "Army Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at 41 CFR 60-300.42, voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(b) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

6. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JULY 2014)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-4.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

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


(a) The Contractor shall insert the terms of this clause in all subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
7. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS - EXECUTIVE ORDER 13496 [APR 2010]

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

Federal contractors and subcontractors are required to notify employees of their rights under the National Labor Relations Act (NLRA), the primary law governing relations between unions and employees in the private sector. See 29 CFR Part 471. The notice, prescribed in the Department of Labor’s regulations, informs employees of Federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. Additionally, the notice provides examples of illegal conduct by employers and unions, and it provides contact information to the National Labor Relations Board (NLRB) for the agency responsible for enforcing the NLRA and federal labor standards. The notice is published by the Department of Labor and is available in the Federal Register (http://www.gpo.gov/fdsys). Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in places where employees covered by the NLRA perform contract-related activity, including all places where notices to employees are customarily posted both physically and electronically. In accordance with Executive Order 13496, the Notice of Employee Rights under the Federal Service Labor Relations Act, issued by the Department of Labor, will be available in Adobe Reader (.pdf) format on the Department of Labor’s Web site that contains the full text of the poster. The link is http://www.dol.gov/olms regs/compliance/EmployeeRights.pdf.

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

Applies To Contracts That Exceed $10,000 In Value

(A) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and 7.(b) This required employee notice, printed by the Department of Labor, may be—

(1) Provided by the Federal contracting agency if requested;

(2) Provided by the Federal contracting agency if requested.

(b) The Contractor shall include the substance of this clause, including this paragraph (a) through (d) of this clause, in all solicitations for contracts and in any other solicitation and award of a contract, or transportation of performance, where the contractor is directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

9. EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)

Definitions. As used in this clause—

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

"COTS" means any item of supply that is—

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

(i) A commercial item (as defined in paragraph (1) of the definition at 2101.2013). Such items are not subject to the Federal Acquisition Regulation (FAR).

(ii) A commercial item that is listed in the Defense Federal Acquisition Regulation System (DFARS) as a COTS item.

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

(iv) Does not include services as defined in DFARS 41.0014(c), such as agricultural products and petroleum products. Per 46 CFR §525.1(c2), “bulk cargo” means cargo that is loaded and carried in bulk, the cargo is not unloaded or delivered in accordance with a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count requirements at the point of origin. The Contractor, then the Contractor shall re-enroll in E-Verify.

(c) Web site. Information about the E-Verify program and the E-Verify User Guide can be obtained via the Internet at the Department of Homeland Security Web site, http://www.dhs.gov/E-

(d) Individuals previously verified. 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 the contractor’s, secret, or top secret information; or

(iii) Who has a value of more than $3,000; and

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

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

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

(a) Definitions. As used in this clause—

(i) Affirmative action for workers with disabilities (OAWD) means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, and the U.S. Virgin Islands.

(ii) Affirmative action for workers with disabilities (OAWD) means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, and the U.S. Virgin Islands.
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contracting Officer.

(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

(viii) Activities sponsored by the Contractor, including social or recreational programs; and

(ix) Any other term, condition, or privilege of employment.

The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

12. PROPOSALS

(a) ceilings.

(b) Postings.

(1) The Contractor agrees to post employment notices stating -- (i) The Contractor's obligation under the law to notify the Department of Labor of newly hired employees and employment qualified individuals with disabilities; and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of their rights under the Act (e.g., a contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act to take affirmative action to employ, and advance in employment, qualified individuals with disabilities.

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

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Deputy Assistant Secretary.

11. INFORMATION TECHNOLOGY ACQUISITIONS (MARCH 2009)

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

12. 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 protecting all classified information and all classified matter (including documents, material, and special nuclear material) which are in the contractor's possession in connection with the work under the contract, its subcontractors, its employees, its work force, or its contractors or subcontractors, and shall take such steps to prevent sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor may not assign or subcontract any portion of this contract, except to another Federal agency, or whose access authorization may be reapproved in accordance with DOE regulations. The Contractor shall immediately provide the cognizant security office written notice of any change involving foreign ownership, control, or influence, and that subsequent reinvestigations may be required. If the position requires an access authorization, the Contractor must comply with such instructions as the Contracting Officer may provide in writing to protect any classified information or special nuclear material.

Access authorizations of personnel.

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

(2) The Contractor must conduct a thorough background check, as defined at 48 CFR 99.401-1, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and current residential or work addresses, and of any prior criminal record. The review may include personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the unclesed applicant or unclesed employee resides in the jurisdiction in which the Contractor is located; and conduct a credit check and other checks as appropriate.

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

(ii) In collecting and using this information to make a determination as to whether it is appropriate to assign an uncleared applicant or unclesed employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, rules, and regulations concerning those: (a) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.); the Driver's Privacy Protection Act (18 U.S.C. 2721, et seq.); the 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 employee disability related questioning.

(iii) Additional processing of an individual's information to evaluate whether DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR Part 707.4. All positions requiring access authorizations are deemed testing positions for illegal drugs in accordance with 10 CFR Part 707.4. All employees possessing access authorizations are subject to random, pre-employment, or cause. DOE will not process applications for DOE access authorization unless their testing confirms the absence of any illegal drug.

(iv) When the Contractor is notified that an unclesed applicant or unclesed employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor must ensure that, prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local DOE security office. If the position requires an access authorization, the unclesed employee may not be afforded access to classified information or master or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(v) The Contractor must maintain a record of information concerning each unclesed applicant or unclesed employee who is selected for a position requiring an access authorization. This record information shall be furnished to the head of the cognizant local DOE Security Office.

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

B. Each entity that provided information concerning the individual;

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

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

(f) Fringe benefits available by virtue of employment, whether or not administered by the Contracting Officer, which increases the living standard of the employee, may be offered to employees, as appropriate.

(g) Employment announcements. When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall ensure that the announcement states that the position requires an access authorization. The announcement should also alert applicants that successful completion of a polygraph examination may include a counterintelligence- scope polygraph examination.
13. CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to sensitive or proprietary information (containing either Restricted Data or Formerly Restricted Data or National Security Information).

In addition, the contractor or subcontractor shall ensure that existing classified documents are declassified or downgraded in classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier. Other personnel (Government or contractor) may serve as contractors or subcontractors which requires a decision being made as to whether the information is declassified or downgraded.

The original decision to classify or declassify information is considered an inherently Government function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivatives classifiers which requires a decision being made as to whether the information is declassified or downgraded.

Provisions of the Department of Energy's regulations and mandatory DOE directives which apply to sensitive or proprietary information (containing either Restricted Data or Formerly Restricted Data or National Security Information).

14. CLEAN AIR AND WATER (APR 1984)

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

(b) “Clean standards,” as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise applicable to the Code of Federal Regulations, in effect on the date of this contract.

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

(3) An approved implementation procedure or plan under section 111(c) or section 116(d) of the Air Act (42 U.S.C. 7411(d) or 7442(d)).

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

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

(d) “Compliance,” as used in this clause, means compliance with—

(1) Clean air or water standards;

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under section 307 of the Water Act or section 114 of the Air Act (42 U.S.C. 7401(b) or 7410(b));

(3) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise applicable to the Code of Federal Regulations, in effect on the date of this contract.

(e) “Facility,” as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of this contract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location is considered a facility even though it is not owned by the Contractor Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

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

(g) The contractor agrees—

(1) To comply with all the requirements of section 114 of the Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1338) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 306 of the Clean Water Act.

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

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

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

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

(a) Definition. As used in this clause—

“Energy-efficient product” means a product that—

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label.

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

(b) Requirements of paragraph (a) (i) of this clause apply to federal Energy Management Programs.

(c) The term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions.

(d) Information about these products is available for—

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

(2) FEMP at http://www1.eere.energy.gov/efemp/.

16. TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

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

(b) Unless otherwise specified, the Contractor or a contractor of a facility used in the performance of this contract, shall file by July 1 of the prior calendar year an annual Toxic Chemical Release Inventory (Reg. No. 2365-187) on Forms R-960(2) and R-960(5) in accordance with sections 313 and 316 of (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11323(a) and (g)), and section 6807 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13261). In which facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(c) A contractor-owned and used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals and PPA classified as or designated or procured for combat or combat-related missions.

(2) The facility does not have 10 or more full-time employees as specified in section 313 of EPCRA.

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11323(f) (including the alternate reporting thresholds at EPCRA CFR 35.6). An alternate certification form has been filed with EPA.

(d) The facility does not fall within Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(1) Major group code 30 (except 3011, 3018, and 1064).

(2) Major group code 12 except 1243.

(3) Major group codes 20 through 39.

(4) Industry code 4111, 4131, or 4139 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(5) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 9621, et seq.), or 5169, 5171, 7389 (limited to facilities primarily engaged in solvent recovery and treatment or blending of hazardous waste).

(e) The facility is not located in the United States or its outlying areas.

(f) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after the award of the contract circumstances arise which allow the Contractor to manufacture or use toxic chemicals in the performance of the contract, the Contractor shall—

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

(2) Continue to file the annual Form R for the life of the contract for such facility.

(g) The Contractor or a contractor may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release requirements.

(h) For exceptions of commercial items as defined in FAR Part 2, the Contractor shall—

(1) For competitive subcontracts expected to exceed $100,000 (including all options), include a solicitation provision substantially the same as the provisions at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding $100,000 (including all options), the substance of this clause, except this paragraph (e).

17. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

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

(b) The contractor shall notify the Laboratory Procurement Representative or designee when any item that contains radioactive materials is to be received by the Contractor, and that any bill of lading or other documents used in the performance of this contract is exempt from the requirements of this clause.

(c) The Contractor, as owner or operator of a facility used in the performance of this contract that is not located in the United States or its outlying areas, shall—

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

(2) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contractor shall comply with the provisions of Toxic Chemical Release Reporting and take any additional action as required by the Contractor.

(e) The Contractor shall notifying the Laboratory Procurement Representative or designee when any item that contains radioactive materials is to be received by the Contractor, and that any bill of lading or other documents used in the performance of this contract is exempt from the requirements of this clause.

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

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

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

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

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

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

[To be filled in by Laboratory Procurement Representative]
19. PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003)

(a) Definitions. As used in this clause -- International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. Appx 40311B(Fly America-Act)) requires that all federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from appropriated funds for obtaining services from non-U.S. carriers. Contractors shall be accustomed to any equipment, material, or commodity unless obtained from a U.S.-flag carrier a U.S.-flag air carrier is available to provide such services.

(c) If available, the contractor, in performing work under this contract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of personnel (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation):

[State reasons]

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

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

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241[b]) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of United States, in the absence of satisfactory proof of the necessity for foreign- or privately owned U.S.-flag vessels.

(b) The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate the subcontracting plan as required by paragraph (c) of this clause.

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

1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall provide the plan in a manner that meets the requirements of 43 U.S.C. 1652(e).

2. A statement of—
   a. Definitions. As used in this clause
   b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate the subcontracting plan, where applicable, that specifies the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

3. A description of the method used to develop the subcontracting goals in paragraph (c) above, to include the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

4. A description of the method used to develop the subcontracting goals in paragraph (c) above, to include the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

5. Small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor shall furnish these bill of lading copies to--
   i. The Contracting Officer, and
   ii. The-Office of Cargo Preference
   iii. Maritime Administration (MAR-590)
   iv. Washington, DC 20590

(c) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (d)(4).

(d) The contractor in paragraph (a) does not apply to—

1. Cargoes carried in vessels or as required or authorized by law or treaty.

2. Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2333).

3. Vessels of classified supplies when the classification prohibits the use of non-Government vessels; and

4. Subcontracts or purchase orders for the acquisition of commercial items unless—
   a. an agreement for ocean transportation services; or
   b. a contract between the offeror and the government agency.

(i) The agreement includes ancillary indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

(ii) Where one or more subcontractors are in the subcontracting plan, the offeror shall separately address subcontracting with small business concerns, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(iii) The offeror shall submit a subcontracting plan for the contract, no later than the date of the subcontract award.

(j) The agreement includes ancillary indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

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

1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall negotiate the subcontracting plan, unless the offeror has estimated the subcontracting goals or the offeror has been designated as such by the Contracting Officer.

2. A statement of—
   a. Definitions. As used in this clause
   b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate the subcontracting plan, where applicable, that specifies the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

3. A description of the method used to develop the subcontracting goals in paragraph (c) above, to include the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

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

21. APPLICABLE LAW (OCT 1999)

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

22. SMALL BUSINESS SUBCONTRACTING CONTRACT (JAN 2011)

This clause does not apply to small business concerns

21. APPLICABLE LAW (OCT 1999)

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

22. SMALL BUSINESS SUBCONTRACTING CONTRACT (JAN 2011)

This clause does not apply to small business concerns

a. Definitions. As used in this clause

b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate a subcontracting plan where applicable, that specifies the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

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

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

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

"The offeror's subcontracting plan shall include the following:

1. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall negotiate the subcontracting plan, unless the offeror has estimated the subcontracting goals or the offeror has been designated as such by the Contracting Officer.

2. A statement of—
   a. Definitions. As used in this clause
   b. The offeror, upon request by the Laboratory Procurement Official, shall submit and negotiate a subcontracting plan where applicable, that specifies the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

3. A description of the method used to develop the subcontracting goals in paragraph (c) above, to include the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

4. A description of the method used to develop the subcontracting goals in paragraph (d) of this clause.
5. A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veteran service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations); A firm may rely on the information contained in SAM as small, HUBZone, small disadvantaged, and women-owned small business concerns; the concern’s size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve it of a firm’s responsibilities (e.g., outreach, assistance, counseling, or publishing subcontracting opportunities) with respect to small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small businesses.

6. A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with:
   1. Small business concerns (including ANCs and Indian tribes);
   2. Veteran-owned small business concerns;
   3. Service-disabled veteran-owned small business concerns;
   4. HUBZone small business concerns;
   5. Small disadvantaged business concerns (including ANC and Indian tribes); and

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

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

9. Assurances that the offeror will include in this contract its commitment to compliance with the Small Business Concerns in all subcontract agreements that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $50,000 in subcontracting opportunities as follows: (1) for the construction of any public facility with further subcontracting possibilities, the contractor shall establish a construction program similar to the plan that complies with the requirements of this clause.

10. Assurances that the offeror will:
   1. Cooperate in any studies or surveys as may be required;
   2. Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
   3. Submit the information required by this clause to the Department of Defense, and the Contractor’s prime contract number, its DUNS number, and the e-mail address of the offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can review this information in the eSRS when submitting their ISRs.
   4. Ensure that its subcontracts with subcontracting plans agree to submit the ISR and the SSR using eSRS;
   5. 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.

11. A description of the types of records that will be maintained concerning procurement actions that have been adopted to comply with the requirements and goals in the plan, including establishing and maintaining source lists, the offeror’s efforts to include 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 sole-source contracts and in subcontract awards to them. A firm shall be held responsible for complying with the requirements of this clause by submitting one ISR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted semi-annually during contract performance for civilian agencies and its corresponding fiscal year or every calendar year for DoD agencies. A firm that is not required to submit a plan must still submit an ISR.

12. A description of the procedures the contractor will follow to implement the plan to the extent consistent with efficient contract performance.

5. In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall:
   1. Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s list of potential subcontractors does not include representatives of all small businesses, service-disabled veteran-owned small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to contact 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.
   3. Counsel and discuss subcontracting opportunities with representatives of small, 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 contractor 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 notices concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
   6. Counsel and discuss subcontracting opportunities with representatives of small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

A. In the case of the prime Contractor, with the Contracting Officer; and
B. In the case of subcontractors with the Contracting Officer or with the Contracting Officer’s designate in accordance with agency regulations.

The contractor shall provide notices of internal guidance and encouragement provided to buyers through the ISRs, to all first-tier subcontractors with subcontracting plans so they can review this information in the eSRS when submitting their ISRs.

Until such time as the Government can determine the extent of compliance by the offeror with the subcontracting plan; the Contractor shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small HUBZone business concerns, small disadvantaged business concerns (including ANCs and Indian tribes), small disadvantaged business concerns (including ANCs and Indian tribes)), small business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

4. Ensure that its subcontracts with subcontracting plans agree to submit the ISR and the SSR using eSRS;

5. Provide an approved plan required by this clause, shall be a material breach of the contract.

6. The master plan has been approved;

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

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

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

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

D. Whether subcontractors from the prime contractor have been used to subcontract awards made to their immediate next-tier subcontractors. Credit cannot be taken for purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to work made to date under the prime or subcontract, and shall be taken for records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated) that have been subcontracted:

1. Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and their prime contracts;

2. Organizations that directly or indirectly locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns;

3. Reports on subcontract solicitation resulting in an award of more than $50,000, indicating:
   A. Whether small business concerns were solicited and if, why not;
   B. Whether veteran-owned small business concerns were solicited and, if not, why not;
   C. Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
   D. Whether HUBZone small business concerns were solicited and, if not, why not;
   E. Whether small disadvantaged business concerns were solicited and if, why not;
   F. Whether women-owned small business concerns were solicited and if, why not;

4. If applicable, the reason award was not made to a small business concern;

5. Records of any outreach efforts to contact—
   A. Trade associations;
   B. Business development organizations;
   C. Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
   D. Veterans service organizations.

6. Records of internal guidance and encouragement provided to buyers through—
   A. Workshops, seminars, training, etc., and
   B. Monitoring performance to ensure compliance with the program’s requirements.

7. On a contract-by-contract basis, records to support award data submitted by the offeror to the Government concerning the substantive nature of the subcontract, and the dollar value of the subcontract.

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

9. When a subcontractor maintains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a second option exercised after the second option, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

10. The authority to acknowledge receipt or reject the ISR resides—
   A. In the case of the prime Contractor, with the Contracting Officer; and
   B. In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

11. Reports submitted under individual contract plans—
   A. This report encompasses all subcontracting under prime contracts and subcontract plans approved by the Contracting Officer, and;
   B. Each executive agency covering only that agency’s contracts, provided

12. The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be
submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

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

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor. In the event that the small business subcontractor fails to provide the required documentation, the payment shall be suspended until such documentation has been provided.

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

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

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

1. Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, and

2. Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to certify in substantially the form prescribed at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

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

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that does not exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later. 

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

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

1. The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

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

3. Any of these parties furnished any information that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be allowed against the amount of a contract price reduction if—

1. the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

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

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

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

3. The contractor 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.

4. The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data;

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

1. The Contractor certifies to the Contracting Officer that, to the best of the Contractor’s knowledge and belief, the contract price is offset in the amount requested, and

2. The Contractor certifies that the certified cost or pricing data were available before the date of agreement on the contract price.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable and to pay the United States at the time such overpayment is recovered.

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

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the thresholds 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 15.403-2 applies.

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

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

2. 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 allowed against the amount of a contract price reduction if—

1. The actual subcontract cost or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.
30. LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

This clause is applicable to all cost-reimbursement subcontracts that exceed the simplified acquisition threshold (SART).

(a) Definitions. As used in this clause—

"Added value" means the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

"Excessive pass-through charge," with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government (as defined in FAR 41.002, excludes the cost of subcontracting and any applicable indirect costs and associated profit fee based on such costs).

"No or negligible value" means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added to or otherwise affects any other terms and conditions of this contract.

"Subcontractor" means any subcontractor, including the lower-tier subcontractor(s), that is for indirect costs or profit/fee on work performed by a subcontractor that is for indirect costs or profit/fee on work performed by a contractor.

"Supplies" means all raw materials, components, intermediate assemblies, and products, lots and services, including all property provided under the delivery order.

"Subcontract" means any contract, subcontract, or purchase order, or delivery order, the Contractor or subcontractor entered into by a subcontractor to furnish supplies or services for performance of the contractor or subcontractor, it includes but is limited to purchase orders, and changes and modifications to purchase orders.

"Work performed" means the effort added to or otherwise affects any other terms and conditions of this contract.

(b) General. The Government will not pay excessive pass-through charges.

(c) The Contractor shall agree, and the Contractor or subcontractor will be liable to and shall pay the United States at the time such overpayment is made—

(1) The amount of such overpayment.

(2) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date (or from any interim date) of the overpayment to the date the Government is repaid.

(3) The amount of such overpayment that is due as interest, if any, to the extent the Government's bankruptcy act is applicable.

(d) If the Laboratory performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance in performing the work, consistent with the Contractor's obligations hereunder, and will allow the Contractor to inspect, or shall allow the Contractor to inspect, the inspection and test work performed by the Contractor or subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any loss or damage suffered by the Government or subcontractor.

(e) Following the receipt of any written order that the Contractor or subcontractor failed to furnish, or furnish in a timely manner, any acceptable inspection or test equipment, the Laboratory may at any time require the Contractor or subcontractor to furnish or furnish certain test equipment or proceed at the Contractor's expense to furnish or furnish such test equipment.

(f) If the Laboratory determines that the Contractor or subcontractor failed to perform any work required by the contract, the Laboratory may require the Contractor or subcontractor to furnish or furnish certain test equipment or to proceed at the Contractor's expense to furnish or furnish such test equipment.

(g) Notwithstanding paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract is considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until modified, the contract is not considered to contain any increase in the total cost of the contract or funds beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

32. 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 of the contractor and without the fault or negligence of the contractor. Examples of these causes are (1) acts of God or of public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, floods, (4) epidemics, (5) quarantine restrictions, (6) strikes, lockouts, or other labor disputes, (7) insurrection, or (8) any event beyond the control of either. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(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 the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable to and shall pay the United States at the time such overpayment is made—

(1) The amount of such overpayment.

(2) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date (or from any interim date) of the overpayment to the date the Government is repaid—

(iii) The subcontractor did not submit a Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(iii) The subcontracted supplies or services were obtainable from other sources;

(2) The Laboratory ordered the contractor in writing to purchase these supplies or services from the other source.

(3) The contractor failed to comply reasonably with this order.

(4) Upon receipt of the Contractor's notification, the Laboratory shall ascertain the facts and extent of the failure. If the Laboratory determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Laboratory under the termination clause of this contract.

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

(a) Definitions. As used in this clause—

"Contractor" means any contractor, including the lower-tier subcontractor(s), and the Government's 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;

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

"Laboratory" means the Government.

"Supplies" includes but is not limited to raw materials, components, intermediate assemblies, and products, lots and services, including all property provided under the delivery order.

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

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

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

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

(f) At any time during contract performance, but no later than 6 months (or other such time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Laboratory may, if the Contractor has not furnished the data required by FAR 52.215-3, require the Contractor to furnish the Government with the data required by FAR 52.215-3.

(g) The Contracting Officer shall not assign the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract; or

(1) The Contractor shall provide within 30 days from the date of receipt of the written order. However, if the Laboratory decides that the facts justify it, the Laboratory may receive and act upon a proposal submitted before final approval of the proposal.

(h) Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(i) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract is considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until modified, the contract is not considered to contain any increase in the total cost of the contract or funds beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

31. CHANGES—COST-REIMBURSEMENT (OCT 1999)

(a) The Laboratory may at any time, by written order, and without notice to the sureties, if any, take such action as the Laboratory determines necessary for the secondary scope of this contract or any one or more of the following:

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

(2) Method of shipment or packing.

(3) Place of delivery.

(4) Description of supplies to be performed.

(5) If any change causes an increase in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Laboratory shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.
34. 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.

35. SUBCONTRACTS (OCT 2010)

(a) Definitions. As used in this clause—

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"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 subcontract. 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 uncompensated contract actions (including uncompensated order changes) and only if required in accordance with paragraph (a) 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—

(i) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(ii) Is fixed-price and exceeded—

(A) 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

(B) For a subcontractor who is not a U.S. Government contractor, the higher of the simplified acquisition threshold or 5 percent of the total estimated cost of the subcontract.

(d) If the Contractor has an approved purchasing system, consent to subcontract is required for any subcontract that—

(i) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(ii) Is fixed-price and exceeded—

(A) 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

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

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

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the subcontractor.

(iv) The proposed subcontract price.

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

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

(f) The Contractor shall notify the Laboratory Procurement Official reasonably in advance of placing a subcontract or modification thereof for which consent is required under paragraph (c) of FAR clause 52.222-40.

(g) Consents and approvals required by this clause must be obtained in accordance with the following:

(i) Contracts--

(A) For a fixed-price contract, or a cost-reimbursement contract whose costs will be reimbursed at a fixed percentage of costs, the consent and approval required in this clause must be obtained from the Laboratory Procurement Official.

(B) For a fixed-price contract, the consent and approval required in this clause must be obtained from the Laboratory Procurement Official.

(ii) Subcontracts--

(A) For a fixed-price contract, the consent and approval required in this clause must be obtained from the Laboratory Procurement Official.

(B) For a cost-reimbursement contract whose costs will be reimbursed at a fixed percentage of costs, the consent and approval required in this clause must be obtained from the Laboratory Procurement Official.

(iii) The consent and approval required under subparagraph (d) of this clause must be obtained from the Laboratory Procurement Official.

(h) If the Contractor has an approved purchasing system and consent is not required under subparagraph (c) of this clause for a subcontract, the Laboratory Procurement Official shall notify the subcontractor reasonably in advance of placing the subcontract or modification thereof for which consent is not required under subparagraph (c) of this clause.
“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhenium, and ruthenium.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Laboratory Procurement Official appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

“Property records” means the records created and maintained by the contractor in support of its stewardship, custody, and use of the property.

“Real property” means the real property, including the fixtures, that is acquired or provided by the Government and is transferred to or acquired by the Contractor.

“Repair or replacement” means the repair or replacement of the item included at the Government’s expense. The result shall be the return of the item to like serviceability and condition as it was before the repair or replacement.

“Right of possession” means the right to exercise physical control over the subject property.

“Sale” means the transfer of title to Government property by contract, purchase order, or other written instrument.

“Service” means any activity, other than maintenance, performed upon contract completion or termination. The Property Administrator shall ensure that all property is documented and disposed of in accordance with this clause, and that all records are maintained in accordance with appropriate agency policies.

“Stolen or lost property” means property lost, damaged, or destroyed without the knowledge or consent of the owner.

“Substitute property” means property of like kind and value, obtained in accordance with agency procedures.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of General Services (GSA).

“Title vesting” means the transfer of title to the Government property by contract, purchase order, or other written instrument.

“Unique item identifier” means any standard method used to identify the physical item, such as the National Stock Number (NSN).
(9) Cause and corrective action taken or to be taken to prevent future occurrence.
(10) A statement that the Government will receive any reimbursement for the loss, theft, damage or destruction in the event the Contractor was or will be reimbursed or compensated.
(11) Copies of all supporting documentation.
(12) Last known location. A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.

(iv) Reliance of stewardship responsibility. Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility for Government property when such property is—
(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator, or a Property Administrator granted relief of responsibility for loss, theft, damage or destruction of Government property.
(B) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or
(C) Disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property.
(A) The Contractor shall utilize, consume, move, and store Government property only as authorized in this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
(B) Unless otherwise authorized in this contract or by the Property Administrator, the Contractor shall not commingle Government material with material not owned by the Government.

(g) Systems analysis.
(1) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(h) Contractor liability for Government property.
(1) Unless provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this contract, except when one or more of the following apply:
   (i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or other reimbursement) and the adequacy of and reliability of insurance costs shall be determined in accordance with 31.205-10.
   (ii) The loss, theft, damage or destruction is due to a willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
(2) The Laboratory Procurement Officer has, in writing, revoked the Contractor's authority to acquire property (including property to be acquired by the Contractor, at the time of transport or delivery, under a subcontract or otherwise).
(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.
(4) The Contractor shall ensure Government covers to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property and shall be appropriately safeguarded.

(i) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not be held liable or compensated for the loss, theft, damage or destruction of Government property, including Government-furnished property, if—
(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of this contract;
(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and
(C) Property located at a subcontractor's premise or otherwise in the possession of a subcontractor but to which the Government has not relinquished title.

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

(k) System of records. The Contractor shall disclose and report to the Property Administrator and the designated representative of the Property Administrator information or data, as may be required by this contract, including the types of records and system of records utilized by the Contractor in connection with Government property and subcontracting activities.

(l) Postsubmission adjustments. The Contractor shall notify the Plant Clearing Officer no later than 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. The Plant Clearing Officer, upon expiration of the notice period, the Contractor may make the necessary adjustments in the inventory schedule.

(1) Storage.
   (i) The Contractor shall store the property identified on an inventory disposal schedule until the plant closing date, unless otherwise approved in advance by the Plant Clearing Officer.
   (ii) The Contractor shall submit the final inventory disposal schedule to the Plant Clearing Officer, prior to the closing date, for approval in advance.
   (iii) The Contractor shall submit clearance instructions for the property, in accordance with the instructions for Class B property, at the plant, unless otherwise approved in advance by the Plant Clearing Officer.
   (iv) The Contractor shall store the property identified on an inventory disposal schedule until the plant closing date, unless otherwise approved in advance by the Plant Clearing Office.
(i) If the Government does not furnish disposition instructions to the Contractor within 45 days following acceptance of the scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor’s approved disposal procedures.

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

(iii) The Laboratory Procurement Official may require the Contractor to demilitarize the property prior to sale or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(9) Disposal proceeds. As directed by the Laboratory Procurement Official, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(10) Surcharges. The Contractor shall insert in its subcontracts inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (k)(4) of this clause.

(k) Abandonment of Government property.

(1) The Government shall not abandon sensitive Government property or termination inventory without the Contractor’s written consent.

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

(3) The Government shall not restore or rehabilitate the Contractor’s premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use or if Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words “Government” and “Government-furnished” (whenever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished” respectively. (End of clause)

Alternate I (Aug 2000).

For contracts other than cost reimbursement, labor, time, and materials, and fixed price types, substitute the following for paragraph (h)(1) of the basic clause:

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

Alternate II (June 2007).

For contracts of the basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research, substitute the following for paragraph (k)(3) of the basic clause:

(k) (3) Title to property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than $5,000 shall vest in the Contractor upon acquisition thereof. Subsequently, the Contractor shall furnish the Laboratory Procurement Official with written notice of the acquisition. The property shall be considered Government property properly consumed in performing this contract.

39. KEY PERSONNEL (DEC 2000)

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

1. notify the Laboratory Procurement Officer reasonably in advance; 2. submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

3. obtain the written approval of the Lab’s written approval.

Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competence, conduct, and integrity, the Contractor may remove or suspend such person at once, although the Contractor must notify Laboratory Procurement Officer prior to or concurrently with such action.

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

40. 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 22.305) 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 unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying premium time wages required 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 payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages or liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on this 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 classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor shall also allow authorized representatives of the 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 require its subcontractors to be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

41. INTEGRITY OF UNIT PRICES (OCT 2010)

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

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

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

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than construction contracts with a threshold of $150,000.

(End of clause)

42. WARRANTY OF SERVICES (MAY 2001)

(a) Definition. “Acceptance” as used in this clause, means the act of an authorized representative of the Laboratory by which it is determined that the services have met the applicable performance criteria.

(b) Notwithstanding inspection and acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract, at the time of acceptance, be free from defects and conform to the requirements of this contract.

(c) The Laboratory Procurement Official shall give written notice of any default or nonconformance to the Contractor within 30 days from the date of acceptance by the Laboratory. This notice shall state either—

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

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

(d) If the Contractor is required to correct or reperform, it shall, at its own expense, make the correction or reperformance within the time stipulated by the written notice.

(e) The Laboratory may assess a penalty for each person of nonacceptance, provided that the total penalties do not exceed 10% of the contract price.

(f) The Contractor may appeal any such notice by submitting a written statement of protest within 30 days from the date of notice to the Contracting Officer or the Department of Labor.

43. WARRANTY OF SUPPLIES (JUN 2014)

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

Energy Consuming Products

When the contract requires the specification or delivery of energy consuming products for use in Federal facility, the contractor will specify or deliver EnergyStar® qualified products or products conforming to the Federal Energy Management Program’s (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided such products have an available life exceeding 20 years. Energy consuming products are those products that are used to provide heating, cooling, or hot water in Federal facilities.

Energy Star router products are designated by the symbol “Energy Star” (http://www.energystar.gov/products). In such cases, the contractor shall procure products that are Energy Star qualified.

44. BUY AMERICAN ACT – SUPPLIES (MAY 2014)

(a) Definitions. As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—
(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
(ii) Sold in substantial quantities in the commercial marketplace; and
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40103(a), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit.

Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic;

(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

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

(b) Buy American requires that the Contractor obtain and maintain for domestic end products and supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(2)).

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

45. INSURANCE—LIABILITY TO THIRD PERSONS (MAR 1996)

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

(2) The contractor shall be reimbursed—

(i) For that portion (if any) of the cost of insurance allocable to this contract and (ii) required or approved under this clause.

(c) 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 must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor, its subcontractors, their agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Laboratory. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the contractor, rented to the contractor, or in the care, custody, or control of the contractor); or

(ii) Death or bodily injury.

The Laboratory’s liability under paragraph (c) of this clause is subject to the availability of funds under the Prime Contract between the Laboratory and the Department at the time a contingency occurs. Nothing in this contract shall be construed as employing that history from any earlier contract.

(d) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) if—

(i) For which the Contractor is otherwise responsible under the express terms of any other clause specified in the contract;

(ii) For which the contractor has failed to insure or to maintain insurance as required by the contracts so as to be in compliance with the performance requirements of the performance of the contract;

(iii) Result from willful misconduct or lack of good faith on the part of any one of the contractor’s directors, officers, managers, supervisors, 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 the United States or other matters comprising the performance of the contract;

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

(v) The provisions of paragraphs (e)(1) and (2) 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, other than insurance required in accordance with this clause provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) In any suit or action filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor—

(1) Shall promptly notify the Laboratory of any suit, action, or claim against the contractor, provided that the contractor is notified of the suit, action, or claim within 20 days from the time the contractor first knows of the existence of such suit, action, or claim.

(2) Shall promptly provide the Laboratory with a copy of any such suit, action, or claim, and any answers filed in connection therewith.

46. STATE AND LOCAL TAXES (DEC 2000)

(a) The Contractor agrees to notify the Laboratory of any State or local tax, fee, or charge levied or provided to be levied by the state or local governmental unit from the contractor with respect to the work under this contract, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has not paid or caused to be paid to the state or local governmental unit. The contractor shall—

(i) Provide notice of the tax levied, fee assessed, or charge imposed to the Laboratory; and

(ii) Pay the tax or fee to the state or local governmental unit from which the contractor has been notified.

(b) The Contractor and the Government shall be entitled to any refunds or credits in respect of the foregoing taxes, fees, and charges (including interest) to the extent that they are allowed by the state or local governmental unit.

(c) The Contractor shall hold the contractor harmless from penalties and interest incurred through noncompliance with the provisions of this clause or credited in respect of the foregoing taxes, fees, and charges (including interest) to the extent that they are allowed by the state or local governmental unit.
48. ANTI-KICKBACK PROCEDURES (MAY 2014)

(a) Definitions. "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or any other instrumentality of a local, State, or Federal Government.

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

(b) Signature. As used in this clause, means any person who has entered into a prime contract with the United States.

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

"Subcontract," as used in this clause, means a contract or commercial action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

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

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

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from modifying or amending any Federal contract, with a contract, with a Federal Government or local government or any other instrumentality of a local, State, or Federal Government, that restricts sales by subcontractors directly to the Government, if the Federal or local Government, as applicable, has the authority to contract with the Contractor, or by a prime contractor and the Contractor, or by a prime contractor, subcontractor, that is subject to subparagraph (c)(4)(i) of this clause.

(c) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(4)(i), in all subcontracts under this contract which exceed $100,000.
(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including an update on the amount allocated by the Laboratory.

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

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

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

* "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes any Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (4) of this clause and are permitted by other Federal law.

* "Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation consistent with the normal practice of such officer or employee for work that is not furnished, to not financed, or not furnished in cooperation with the Federal Government. Reasonable compensation means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

* "Recipient" includes the Contractor and all subcontractors. This term excludes any Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (4) of this clause and are permitted by other Federal law.

* "Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee is employed by such person for at least 130 working days within a 12-month period and is paid the amount of compensation which equates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

* "State" means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency of a State or an outlying area, and multi-state, multi-entity entity having governmental duties and powers.

(b) Rulemaking. 31 U.S.C. 1352 requires all recipients of Federal funds to establish policies and procedures to prevent and detect payments to influence Federal actions. To this end, 31 U.S.C. 1352 declares that "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. The term excludes any Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (4) of this clause and are permitted by other Federal law.

* "Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation consistent with the normal practice of such officer or employee for work that is not furnished, to not financed, or not furnished in cooperation with the Federal Government. Reasonable compensation means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

* "Recipient" includes the Contractor and all subcontractors. This term excludes any Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (4) of this clause and are permitted by other Federal law.

* "Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee is employed by such person for at least 130 working days within a 12-month period and is paid the amount of compensation which is an exception to this clause.

(c) 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 total amount so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the total amount so far allotted to the contract by the Laboratory plus any amounts paid by the contractor to the corresponding share. The notice shall state the estimated amount of additional funds required to continue performance of the contract.

(d) The Contractor shall notify the authorized Laboratory Procurement Official in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the amount previously allotted by the Laboratory or; (2) if this is a cost-sharing contract, the amount previously allotted by the Laboratory to this contract.

(e) The Contractor is not obligated to continue performance of the contract under the Termination clause of this contract.

(f) The Contractor shall provide the authorized Laboratory Procurement Official with the following information:

(1) The amount then allotted to the Laboratory or the successor Laboratory;

(2) If this is a cost-sharing contract, the amount then allotted to the Laboratory by the contractor's corresponding share, and the amount of additional funds, if any, appropriated by the Laboratory in excess of the corresponding share; and

(3) Any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Laboratory or (2) the amount then allotted by the Laboratory to this contract plus the contractor's corresponding share, exceeds the estimated cost specified in the Schedule; or (3) the estimated cost specified in the Schedule is not increased, any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(h) 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 total amount so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the total amount so far allotted to the contract by the Laboratory plus any amounts paid by the contractor to the corresponding share. The notice shall state the estimated amount of additional funds required to continue performance of the contract.

(i) 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 amount previously allotted by the Laboratory or; (2) if this is a cost-sharing contract, the amount previously allotted by the Laboratory to this contract.

(j) The Contractor is not obligated to continue performance of the contract under the Termination clause of this contract.

(k) Any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(l) The estimated cost shall be increased to the extent that (1) the amount allotted by the Laboratory or (2) the amount then allotted by the Laboratory to this contract plus the contractor's corresponding share, exceeds the estimated cost specified in the Schedule; or (3) the estimated cost specified in the Schedule is not increased, any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(m) 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 total amount so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the total amount so far allotted to the contract by the Laboratory plus any amounts paid by the contractor to the corresponding share. The notice shall state the estimated amount of additional funds required to continue performance of the contract.

(n) 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 amount previously allotted by the Laboratory or; (2) if this is a cost-sharing contract, the amount previously allotted by the Laboratory to this contract.

(o) The Contractor is not obligated to continue performance of the contract under the Termination clause of this contract.

(p) Any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(q) The estimated cost shall be increased to the extent that (1) the amount allotted by the Laboratory or (2) the amount then allotted by the Laboratory to this contract plus the contractor's corresponding share, exceeds the estimated cost specified in the Schedule; or (3) the estimated cost specified in the Schedule is not increased, any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(r) 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 total amount so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the total amount so far allotted to the contract by the Laboratory plus any amounts paid by the contractor to the corresponding share. The notice shall state the estimated amount of additional funds required to continue performance of the contract.

(s) 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 amount previously allotted by the Laboratory or; (2) if this is a cost-sharing contract, the amount previously allotted by the Laboratory to this contract.

(t) The Contractor is not obligated to continue performance of the contract under the Termination clause of this contract.

(u) Any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(v) The estimated cost shall be increased to the extent that (1) the amount allotted by the Laboratory or (2) the amount then allotted by the Laboratory to this contract plus the contractor's corresponding share, exceeds the estimated cost specified in the Schedule; or (3) the estimated cost specified in the Schedule is not increased, any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(w) 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 total amount so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the total amount so far allotted to the contract by the Laboratory plus any amounts paid by the contractor to the corresponding share. The notice shall state the estimated amount of additional funds required to continue performance of the contract.

(x) 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 amount previously allotted by the Laboratory or; (2) if this is a cost-sharing contract, the amount previously allotted by the Laboratory to this contract.

(y) The Contractor is not obligated to continue performance of the contract under the Termination clause of this contract.

(z) Any costs the contractor incurs before the date at which the amount paid by the Laboratory has been increased and specified in the increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.
the Schedule is obligated to this contract, and thereafter, the clause entitled "Limitation of Cost" shall be applicable and this clause, Limitation of Funds, shall be inapplicable.

53. LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Laboratory more than (1) the estimated cost specified in the Schedule or (2) if this is a cost-sharing contract, the Laboratory's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract, and not to exceed the estimated cost, if this is a cost-sharing contract, includes both the Laboratory's and the contractor's share of the cost.

(b) Reimbursing allowable costs.

(i) 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 (i) 4 percent greater or substantially less than the laboratory's share of the estimated cost.

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

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

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

(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 the estimated cost specified in the Schedule, until the Authorized Laboratory Procurement Official (i) notifies the contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated cost for performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

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

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

(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 estimated cost.

(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.

54. ALLOWABLE COST AND PAYMENT (JUN 2011)

(a) Invoicing.

(i) The Laboratory will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined by the Laboratory in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 and supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Laboratory Procurement Official, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(ii) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments and not interim payments if this contract contains Alternate I to the clause at FAR 52.222-53.

(iii) The designated payment office will make final payments for contract financing on the 30th day after the designated billing office receives a proper payment request, or the event that the Laboratory requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) Reimbursing costs.

(i) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

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

(1) in accordance with the terms and conditions of a subcontract or invoice; and

(2) ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials supplied by the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of providing reimbursement under Government contracts; and

(ii) The amount of financing payments made by the Government is limited to costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).

(c) Accrued costs of Contractor contributions under employee pension plans shall be excluded unless actually paid unless—

(i) The Contractor's practice is make contributions to the retirement fund quarterly or more frequently;

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or the applicable fiscal year; and

(iii) Such contribution and interest on such contribution shall not be excluded from the Contractor's indirect costs for payment purposes.

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

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

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

5.1.1. Indirect cost bases.

(i) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.2 of the Federal Acquisition Regulation (FAR) in effect for the period the indirect cost rates apply.

(ii) The Contractor shall submit an adequate final indirect cost rate proposal to the Laboratory in accordance with Subpart 42.1 of the FAR. The Laboratory shall review the proposal within 60 days following the expiration of each of its fiscal years. Reasonable exceptions, for exceptional circumstances only, may be requested in writing by the Contractor to the Laboratory Procurement Official. The Contractor shall support its proposal with adequate supporting data.

(iii) Schedule of allowable costs for any cost in excess of the estimated cost or, if this is a cost-sharing contract, for any cost (A) for any cost in excess of the estimated cost specified in the Schedule; until the Authorized Laboratory Procurement Official issues a termination or other notice directing that the increase is solely to cover the same costs or other specified expenses.

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

(v) 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.
contractor shall deliver such records to a location specified by the Laboratory Procurement Representative for inspection, copying, and audit. The Labora
tory, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
(1) Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith and in the belief that such misconduct will not result in an adverse action. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall have no knowledge or awareness of the existence of an investigation, or the identity of the individual submitting an allegation, before the initial inquiry or investigation begins. The contractor shall have no knowledge or awareness of the existence of an investigation, or the identity of the individual submitting an allegation, before the initial inquiry or investigation begins.
(2) The contractor shall forward to the contracting officer a copy of the evidentiary record, any recommendations made to the contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken. The contractor shall have no knowledge or awareness of the existence of an investigation, or the identity of the individual submitting an allegation, before the initial inquiry or investigation begins.
(3) The Laboratory may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the LPO finds that:
(1) The research misconduct is not prepared to be conducted in a manner consistent with this clause;
(2) The contractor is not available. The Laboratory's decision to conduct the inquiry or investigation, or to delegate its authority to the contractor, shall be consistent with this clause;
(3) The contractor's investigation or inquiry is conducted in a manner consistent with this clause;
(4) Laboratory involvement is necessary to ensure the public health, safety, and security, or the prevent harm to the public interest;
(5) The assessment involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;
(6) Laboratory involvement is necessary to ensure the public health, safety, and security, or the prevent harm to the public interest;
(7) The contractor's investigation or inquiry is conducted in a manner consistent with this clause;
(8) Laboratory involvement is necessary to ensure the public health, safety, and security, or the prevent harm to the public interest; or
(9) The allegation involves possible criminal misconduct.
(4) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Laboratory, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
(1) Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith and in the belief that such misconduct will not result in an adverse action. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall have no knowledge or awareness of the existence of an investigation, or the identity of the individual submitting an allegation, before the initial inquiry or investigation begins. The contractor shall have no knowledge or awareness of the existence of an investigation, or the identity of the individual submitting an allegation, before the initial inquiry or investigation begins.
(2) The contractor shall forward to the contracting officer a copy of the evidentiary record, any recommendations made to the contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken. The contractor shall have no knowledge or awareness of the existence of an investigation, or the identity of the individual submitting an allegation, before the initial inquiry or investigation begins.
(3) The Laboratory may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the LPO finds that:
(1) The research misconduct is not prepared to be conducted in a manner consistent with this clause;
(2) The contractor is not available. The Laboratory's decision to conduct the inquiry or investigation, or to delegate its authority to the contractor, shall be consistent with this clause;
(3) The contractor's investigation or inquiry is conducted in a manner consistent with this clause;
(4) Laboratory involvement is necessary to ensure the public health, safety, and security, or the prevent harm to the public interest;
(5) The assessment involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;
(6) Laboratory involvement is necessary to ensure the public health, safety, and security, or the prevent harm to the public interest; or
(7) The allocation involves possible criminal misconduct.
(5) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Laboratory, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
Inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(3) Timeliness. The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct, but not throughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) Conclusiveness. To the extent possible, the contractor shall follow through and effectuate the processing of allegations of research misconduct and applicable law and regulation. Knowledge the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) Remediation and Sanction. If the contractor finds that research misconduct has occurred, it shall act promptly and effectively to remediate the misconduct and, using the information obtained, take appropriate action to prevent a recurrence of misconduct. The contractor shall also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effectuated consistent with any applicable personnel policies, procedures, and regulations. The contractor shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of behavior.

The Laboratory reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with applicable law and regulation and, where applicable, the terms of the applicable laws and regulations. However, the contractor’s good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive consideration and shall be taken into account as a factor in an application for renewal of the contractor’s license.

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

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

“Falsification” means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the record.

“Finding of Research Misconduct” means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it was knowingly, intentionally, or recklessly committed.

“Finding” means information sufficient to determine whether an allegation or apparent instance of misconduct warrants an investigation.

“Inquiry” means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

“Investigation” means formal examination and evaluation of the relevant facts.

“Plagiarism” means the appropriation of another person’s ideas, processes, results, or words without giving appropriate credit.

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

“Record of all data or results” means the record of all data or results that embody the facts resulting from scientists’ inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

By executing this contract, the contractor provides its assurance that it has established an administrative process for handling and investigating allegations of research misconduct, and that it will comply with this administrative process and the requirements of 42 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.

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

Site Access

Site access, including cyber access utilizing a Laboratory account, by all non-U.S. citizens must be reviewed and approved by the Laboratory Director or his designee. All requests must be submitted on Form ANL-593. Non-U.S. citizens are either visitors (on site for 30 days or less) or assignees (on site for more than 30 days in a 12-month period). A certified host must be assigned for each visit or assignment. Form ANL-593 should be submitted as far in advance as possible (a minimum of 5 business days for a sensitive assignment, 7 days for a non-sensitive country assignment or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit or visit o
74. INTEGRATION CLAUSE (MAY 2001)
This contract represents the full understanding of the parties and is the entire agreement between the parties. All negotiations between the parties have been merged into the contract, and there are no understandings or agreements other than those incorporated into this contract.

75. TECHNICAL STANDARDS PROGRAM (FEB 2011)
This article applies if any Contractor personnel participate in development, review or selection activities related to DOE Technical Standards.
1. In the performance of this contract, the Contractor, when participating in the development of Department of Energy (DOE) Technical Standards, conducting technical standards review activities, and selecting technical standards for use to support assigned DOE missions and functions, must:
2. Select, use, and adhere to appropriate voluntary consensus standards (VCSs), except where use of VCSs is inconsistent with law or impractical. (Note: VCSs are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international.)
3. Participate as appropriate in development and review of those DOE Technical Standards where the contractor has technical or programmatic interests, or will be affected by the content of DOE Technical Standards under development, or as directed by the Contracting Officer.
4. Designate and provide support for a coordinator for technical standards activities, including identification of the appropriate Subject Matter Experts to review draft DOE Technical Standards.
5. Report participation in VCS activities conducted in support of DOE missions and functions through the Laboratory Technical Standards Manager in The Office of Contract Administration (COA). [Use Form DOE F 1300.2 (05/2010)].
6. Flow down this requirement to subcontractor(s) at any tier to the extent necessary to ensure the contractor's compliance with these requirements.

76. SUSPECT COUNTERFEIT PARTS (DEC 2007)
Notwithstanding any other provisions of this agreement, the contractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the Laboratory. Contractor further warrants that all items used by the contractor during the performance of work at the Argonne National Laboratory include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the contractor shall indemnify the Laboratory, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules. The contractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation may constitute criminal conduct, the Laboratory may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.
ATTACHMENT I TO SUSPECT/COUNTERFEIT PARTS CLAUSE

SUSPECT/COUNTERFEIT PART

HEADMARK LIST

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

Grade 5

Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

<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>
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</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 Sieibo (JP)</td>
</tr>
<tr>
<td>MS</td>
<td>Minato Kogyo (JP)</td>
</tr>
<tr>
<td></td>
<td>Hollow Triangle Infasco (CA TW JP YU) (Greater than 1/2 inch dia)</td>
</tr>
<tr>
<td>E</td>
<td>Daiel (JP)</td>
</tr>
<tr>
<td>UNY</td>
<td>Unytile (JP)</td>
</tr>
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GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:

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

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

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

Headmarkings are usually raised – sometimes indented.

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

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

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