APPENDIX A

ARGONNE TERMS AND CONDITIONS

(For Cost-Reimbursement Contracts)

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1. DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

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

(b) Definitions. Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy facility (1) who has been refused employment, or (2) who has met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, and is not employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, and is not employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(c) Compliance. The Contractor shall send, to each labor union or representative of workers with particular position is available

(d) Postings. The Contractor agrees to comply with the requirements of this clause.

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

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

2. COVENANT AGAINST CONTINGENT FEES (MAY 2014)

(a) Definitions. As used in this clause, “active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran” are as defined in 38 U.S.C. 202. “Indian reservation” is defined in 41 CFR 60-1.5.

(b) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary.

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

(d) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall be submitted to the OFCCP.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall be submitted to the OFCCP.

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

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

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any person or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities, as defined by Section 503, in a manner which does not discriminate.

(b) Recruitment, Selection, and Job Application Procedures. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(c) Noncompliance. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated for default, or suspended in whole or in part and the Contractor shall be liable to the Government for a sum equal to any cost, damage, or injury which may result from the default or suspension as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

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

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any person or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities, as defined by Section 503, in a manner which does not discriminate.

(b) Recruitment, Selection, and Job Application Procedures. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(c) Noncompliance. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated for default, or suspended in whole or in part and the Contractor shall be liable to the Government for a sum equal to any cost, damage, or injury which may result from the default or suspension as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

5. EMPLOYMENT REPORTS ON VETERANS (FEB 2016)

(a) Definitions. As used in this clause, “active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran” have the meanings given in FAR 52.212-5.

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

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

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


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

(g) The Contractor shall report the above items by filing the VETS-4212 “Federal Contractor Veterans Employment Report” and “Filing Your VETS-4212 Report” at http://www.dol.gov/vets/vets4212.html


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

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

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

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

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

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

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

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

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

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

(K) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.
status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

6. EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

(a) Definitions. As used in this clause—

(1) Active duty wartime or campaign badge veteran—"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified veteran," and "recently separated veteran" shall mean the meanings given at FAR 3.902.

(2) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(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 subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

7. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS - EXECUTIVE ORDER 11246 (APR 2012)

(Applies to contracts equal to or greater than $100,000) Federal contractors and subcontractors are required to inform employees of their rights under the National Labor Relations Act (NLRA), the primary labor governing relations between unions and employers under the law. See 29 CFR Part 41. The notice, prescribed in the Department of Labor’s regulations, inform 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 NLRA-engaged employers and unions, and it provides contact information to the National Labor Relations Board (www.nlrb.gov). Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform the contract-related activity, including all places where the contractor’s employees have posted both physically and electronically. To obtain copies of the notice, contractors may contact the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs; or http://www.dol.gov/olms/regs/compliance/EO11246.htm; or from any field office of the Office of Federal Contract Compliance Programs; or via the Internet at the Department of Homeland Security Web site: http://www.dhs.gov/olms.

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 a 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 related to the performance of the contract, including places where notices to employees are posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 412.1(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the NLRA. The notice also identifies the National Labor Relations Board (www.nlrb.gov) as a means of enforcing such provisions.

(2) Contractor must also post in electronic form a copy of the notice on its website.

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of LaborManagement Standards, U.S. Department of Labor, 201 Constitution Avenue, NE, Room N-5609, Washington, DC 20210.

(2) From any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(3) Downloaded from the Office of Labor-Management Standards Web site at http://www.dol.gov/olms/regs/compliance/EO11246.htm; or

(4) Reproduced and used as exact duplicate copies of the Department’s official printed notice.

(c) The record kept of the employee notice referred to in this clause is located at Appendix A, 29 CFR Part 41.

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

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor’s suspension or debarment may be debarked in accordance with 38 CFR 471.14 and paragraph 471.14 and paragraph 474.14. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 417, which implements Executive Order 13498, as otherwise directed by law.

Subcontracts

(1) The Contractor shall insert the substance of this clause, including this paragraph (f), in every subcontract that exceeds $100,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13498 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in any way designed to avoid the applicability of Executive Order 13498 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

9. EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)

(a) Definitions. As used in this clause—

(1) Commercial item (as defined in paragraph (e) of the definition at 2.101);

(2) Sold in substantial quantities in the commercial marketplace, and therefore, ceases to be bulk cargo.

(b) Bulk cargo means cargo that is loaded and carried in bulk on board ship without mark or count, in a holding or reception tank, or in a hopper car; bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count procedures, therefore, ceases to be bulk cargo.

(c) Employee assigned to the contract means an employee who was hired after November 6, 2009 (after November 27, 2009 in the Commonwealth of the Northern Marianas Islands), who has been granted and holds an active U.S. Government security clearance for work related to the contract, and whose employment eligibility was previously confirmed by the contractor through the Employment Verification Initiative (EVI).

(d) Federal contractors and subcontractors are required to inform employees 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 NLRA-engaged employers and unions, and it provides contact information to the National Labor Relations Board (www.nlrb.gov). Federal contractors and subcontractors are required to post the prescribed employee notice conspicuously in plants and offices where employees covered by the NLRA perform the contract-related activity, including all places where the contractor’s employees have posted both physically and electronically. To obtain copies of the notice, contractors may contact the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs; or http://www.dol.gov/olms.

(e) Enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section).

(2) If the Contractor is a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of all new hires.

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

(g) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (see paragraph (b)(3) of this section).

(h) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (see paragraph (b)(3) of this section).

(i) Eligible employee. (A) Eligible employee means any individual who is a U.S. citizen or a noncitizen who is lawfully authorized to work in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section).

(j) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (see paragraph (b)(3) of this section).

(k) Subcontracts.

(1) The Contractor shall require the inclusion of this clause, including this paragraph (i) (appropriately modified for identification of the parties), in each subcontract.

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States, whether or not assigned to the contract.
10. 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://csrc.nist.gov.

11. SECURITY (DEVIATION)(MAR 2011)

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

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

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

(d) Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of weapons or explosives; or technical data or information, including source material or special nuclear material, removed from the Restricted Data category pursuant to 42 U.S.C. 1626 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. Such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) Definition of National Security Information. The term "National Security Information" means that which has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is classified information requiring protection against unauthorized disclosure, and is intended to be limited to the knowledge of those who need it to perform their official duties.

(g) Definitions of Special Nuclear Material. The term special "nuclear material" means: (1) plutonium, enriched in the isotope 233 or in the isotope 235, and any other material which is equivalent to 42 U.S.C. 2162 seq.; 18 U.S.C. 793 and 794). Contractors are encouraged to submit this information in writing to the Department of Justice, shall also be furnished concurrently with the certificate to the Contracting Officer. When this clause has been completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

Contractor's possession in connection with the performance of work under this contract against regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, restore, return, deliver, or transmit, on request, any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention of any classified matter or special nuclear material is required after the completion or termination of this contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved, the contractor, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

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

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

(d) Definition of Restricted Data. The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of weapons or explosives; or technical data or information, including source material or special nuclear material, removed from the Restricted Data category pursuant to 42 U.S.C. 1626 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. Such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) Definition of National Security Information. The term "National Security Information" means that which has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is classified information requiring protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) Definition of Special Nuclear Material. The term special "nuclear material" means: (1) plutonium, enriched in the isotope 233 or in the isotope 235, and any other material which is equivalent to 42 U.S.C. 2162 seq.; 18 U.S.C. 793 and 794). Contractors are encouraged to submit this information in writing to the Department of Justice, shall also be furnished concurrently with the certificate to the Contracting Officer. When this clause has been completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

12. CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to the type of work involved. The contractor shall ensure that all classified information is protected from unauthorized disclosure. The contractor or subcontractor shall ensure that all classified information is reviewed and evaluated in accordance with the Contractor's personnel policies and procedures.


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

(a) Definition. As used in this clause—

(1) "Means a product that—"
16. 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

(1) Delivered;
(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
(3) Furnished by the Contractor for use by the Government; or
(4) Specified in the design of a building or work, or incorporated during its construction, operation, or maintenance.

(b) The requirements of paragraph (a) apply to the Contractor (including any subcontractor) unless

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or PEMP; or
(2) Otherwise approved in writing by the Contracting Officer.

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

[To be filled in by Laboratory Procurement Representative]

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

(a) Definitions. As used in this clause -- International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

(i) United States means the 50 States, the District of Columbia, and outlying areas.

(ii) U.S.-flag air carrier means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(iii) Section 9 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118(f)(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 event of excessive rates or the necessity for foreign air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(b) 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:

STANDARD UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carriers was not available due to unavailability of a U.S.-flag air carrier for service for the following reasons (see Section 47.403 of the Federal Acquisition Regulation):

[State reasons]

[End of Statement]

(c) 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.

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

(a) Except as provided in paragraph (c) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1214(b) requires Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed for each year in a fiscal year on the basis of deadweight tonnage). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that meets the definition of transportation by ocean vessel:

(1) Acquired for a U.S. Government agency account;
(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement; or
(3) Furnished for the account of a foreign nation in connection with which the United States supplies funds or credits, or guarantees the convertibility of foreign currencies; or
(4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage of equipment, materials, or commodities that meet the conditions set forth in paragraph (a) above, to the extent that such transportation is available, when any equipment, materials, or commodities

(1) Acquired for a U.S. Government agency account;
(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement; or
(3) Furnished for the account of a foreign nation in connection with which the United States supplies funds or credits, or guarantees the convertibility of foreign currencies; or
(4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

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

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

15. NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Laboratory Procurement Representative or designer, in writing, prior to the delivery of, or to an offer for any sampling required by this contract, of materials containing

(1) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or
(2) Other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.5 microcuries.

Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the material, and any other information which the contractor which will put such items on notice as to the hazards involved (OMB No. 0005-0017).

* The Laboratory Procurement Representative shall maintain for a period of five years the records of all radioactive material that the contractor is asked to notify us of and all shipments of such material.

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material delivered under this contract or prior contracts, the Contractor may request that the Laboratory Procurement Representative or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall —

(1) Be submitted in writing;
(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.5 microcuries, and all contracts in which such items, parts or subassemblies are delivered to the Government or the Laboratory shall be clearly marked and labeled as required by the latest revision of MIL-STD-129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.
f) **Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:**

Office of Costs and Rates
Maritime Administration
120 Seventh Street, SW
Washington, DC 20590
Phone: 202-366-2324

19. **APPLICABLE LAW (COT 1999)**

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

20. **SMALL BUSINESS SUBCONTRACTING PLAN (APR 2016)**

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause-

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (25 U.S.C. 1452 et seq.), and which is considered a person or economically disadvantaged business concern for purposes of this request, as defined in (3) U.S.C. 166(i). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 41 U.S.C. 637(b).

**Commercial item** means a product or service that satisfies the definition of commercial item in §1-1.401 of the Federal Acquisition Regulation.

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

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

**Indian tribe** means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1600 et seq.), and which is considered a person or economically disadvantaged business concern for purposes of this request, as defined in (3) U.S.C. 166(i). This definition also includes Indian-owned economic enterprises that meet the requirements of 41 U.S.C. 637(b).

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

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

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

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

(d) 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, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them.

(2) Source lists (including ANCs and Indian tribes), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(e) The offeror’s subcontracting plan shall include the following:

(1) Vessel list necessary to comply with paragraphs (2) and (6) of this clause.

(2) A statement of-

(i) Vessel list necessary to comply with paragraphs (2) and (6) of this clause.

(j) Assurances that the offeror will:

(i) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(ii) Include in the offeror's subcontracting plan lists of all subcontractors, including subcontractors used in providing services for the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 41 U.S.C. 637(b).

(iii) Ensure that its subcontractors with subcontracting plans agree to submit the information listed in information sources required in this clause.

(iv) Provide the Contracting Officer with the necessary corrective actions for each data element that is not reported.

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter the data into the eSRS when awarding subcontracts.

(vi) HUBZone small business concerns;

(vii) Small, HUBZone, small disadvantaged, and women-owned small business concerns.

(f) Records on each subcontract solicitation resulting in an award of more than $150,000 with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(i) 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 women-owned small business concerns.

(ii) Provide small business concerns with at least one subcontracting opportunity in each of the five categories of small business concerns identified in this clause: service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business.

(iii) During the first year of the contract, report all subcontracts over $150,000 to the Contracting Officer.

(iv) Submit periodic reports so that the Government can determine the extent of compliance with the subcontracting plan.

(v) Whether small disadvantaged business concerns were solicited and, if not, why not.

(vi) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter the data into the eSRS when awarding subcontracts.

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

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

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

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

F. Vessel list necessary to comply with paragraph (2) of this clause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. **A U.S. INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCIAL NAVIGATION, MARITIME ADMINISTRATION**

25 U.S.C. 1452(c)

E-mail: contact_us@biso.gov

Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s list of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors is excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

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

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

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

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is not a small business subcontract.

(6) The failure of the Government to comply in good faith with-

(i) The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Regulatory Authorities, in subpart 499.5, Subcontracts for Commercial Items, under a prime contract. Once the Contractor's commercial plan has been approved, the Contractor will not be required to comply with this clause, but the successful subcontract offeror, the Contractor must inform each unsuccessful subcontractor or the contractor, as the case may be, of all relevant information concerning the dispute.

(ii) The clause at 52.212-4, Subcontractor Cost or Pricing Data, in subpart 499.5, Subcontracts for Commercial Items, under a prime contract. This report shall be submitted within 30 days after the end of the Government's fiscal year.

Prior compliance of the offeror with other such subcontracting plans under previous contracts, unless otherwise directed by the Contracting Officer, shall be considered by the Government in determining the responsibility of the offeror for award of the contract.

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

(6) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Regulatory Authorities, in subpart 499.5, Subcontracts for Commercial Items, under a prime contract. The plan shall be submitted by subcontractors with subcontracting plans, resides with the Contracting Officer who approved the commercial plan.

(7) The failure of the Contractor or subcontractor to comply in good faith with-

(i) The clause of this contract entitled “Utilization Of Small Business Concerns;” or

(ii) An approved plan required pursuant to paragraph (2) of this clause, shall be material breach of the contract.

The Contractor shall submit ISRs and SSRs using the web-based eSRS at www.fedinsourcing.gov/Purchase. 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 purchases made to the contractor's next-tier subcontractors. Credit cannot be taken for purchases made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or other tier subcontractor.

(8) Subcontracting plans shall be submitted for all contracts awarded by military departments/agencies and/or commercial plans for subcontracts performed outside the United States and its outlying areas.

(ii) The contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later, or when price is finalized after the close of each reporting period, unless otherwise directed by the Contracting Officer. For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30.

(ii) The contractor shall submit intermediate reports to the Laboratory from time to time when requested, in such form and number as may be required by the Laboratory, summarizing activities in relation to subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(3) The contractor shall submit reports to the laboratory on a monthly basis or within 30 days after the end of each fiscal quarter. For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30.
(3) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data.

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

(3) Any of these parties furnished data of any description that were not accurate, the data were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or were not available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

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

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

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

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or were not available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(iii) The Contracting Officer did not based on an agreement the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

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

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

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor’s knowledge and belief, the Contractor is entitled to the amount of the overpayment, if the Contractor or subcontractor shall be liable to and shall pay the United States at the time such overpayment is

(b) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor shall be liable to and shall pay the United States at the time such overpayment is

(4) Any subcontractor changes the amount of lower-tier subcontractor effort after award that such it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort as an increase in the amount to be offset and shall include verification that the Contractor will provide added value;

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

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

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

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

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

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

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

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or were not available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(iii) The Contracting Officer did not based on an agreement the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

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

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

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

A: The undersigned data were known by the Contractor to be understated under the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

B: The Contractor proves that the facts demonstrate that the contract price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
30. EXCusable DELAYS (OCT 1999)

(a) Except for defaults of subcontractors at any tier, the contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the contractor. Examples of these causes are (1) acts of God or of the Government, (2) acts of the Contractor in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, (9) unusually severe weather, or (10) the deliberate act of a third party. In such 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 prevent its completion.

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

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

(c) Upon request of the contractor, the Laboratory shall ascertain the facts and extent of the failure.

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

(a) Definitions. As used in this clause—

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

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

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

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

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

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

(e) Unless otherwise specified in the contract, the Laboratory shall accept supplies as promptly as possible after delivery, and if the Contractor delays delivery of acceptable supplies 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Laboratory may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. When the defective cause is in material or workmanship or are otherwise not in conformity with contract requirements.

(g) Except as otherwise provided in paragraph (f) of this clause, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(h) When the Contractor fails to provide reasonable responses to any request for information contained in this paragraph, the Laboratory may—

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

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

(i) Notwithstanding paragraphs (f) and (g) of this clause, the Laboratory may at any time require the Contractor to correct or replace, without cost to the Laboratory, nonconforming supplies where the cause of the nonconformity is due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
(2) The conduct of any of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reason to believe that the employee is habitual to the making of false or misleading statements.

(j) This clause applies in the same manner to correction or replacement as to supplies originally delivered.

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

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

32. PERMITS OR LICENSES (OCT 1999)

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

33. SUBCONTRACTS (OCT 2010)

(a) Definitions. As used in this clause—

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

"Contract 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 the contractor to furnish supplies or services for performance of the prime contract or a subcontract that is included.

(b) Unless the clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

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

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

(1) 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
(2) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Laboratory's Procurement Official's written consent before placing the following subcontracts:

(1) A subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

34. ASSIGNMENT (OCT 1999)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the Laboratory. The Laboratory may assign this contract with respect to which the Contractor may be entitled to any interest in this contract or parts thereof without the consent of the Contractor.

35. SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2015)

(a) Definitions. As used in this clause—

"Contracting officer" means the person in charge of the contract execution, whether designated by the contractor or by the Government or its designee. The Laboratory may assign this contract to a successor operator of the Laboratory.

"Contractor's subcontractor" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items that offer subcontracting opportunities.

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

(1) 52.203-32, Contractor Code of Business Ethics and Conduct (Apr 2010) (b) (1) If the subcontract is funded under the Recovery Act, (c) (4) if the subcontractor is located in a low income or depressed area as defined in Executive Order 12576, and (2) if the subcontractor is located in a low income or depressed area as defined in Executive Order 12576.

35. SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2015)

(a) Definitions. As used in this clause—

"Contracting officer" means the person in charge of the contract execution, whether designated by the contractor or by the Government or its designee. The Laboratory may assign this contract to a successor operator of the Laboratory.

"Contractor's subcontractor" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items that offer subcontracting opportunities.

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

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(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items that offer subcontracting opportunities.

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35. SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2015)

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"Contracting officer" means the person in charge of the contract execution, whether designated by the contractor or by the Government or its designee. The Laboratory may assign this contract to a successor operator of the Laboratory.

"Contractor's subcontractor" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items that offer subcontracting opportunities.

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

(i) 52.203-32, Contractor Code of Business Ethics and Conduct (Apr 2010) (b) (1) If the subcontract is funded under the Recovery Act, (c) (4) if the subcontractor is located in a low income or depressed area as defined in Executive Order 12576, and (2) if the subcontractor is located in a low income or depressed area as defined in Executive Order 12576.
(v) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
(viii) 52.222-25, Equal Opportunity for Workers with Disabilities (Jun 2014) (29 CFR 324).
(x) 52.222-27, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13465), if flow down is required in accordance with paragraph (f) of FAR Clause 52.222-40.
(xi) 52.222-29, Combating Trafficking in Persons (Feb 2009).
(xii) 52.222-30, Minimum Wages Under Executive Order 13665 (Dec 2015).
(xiv) 52.232-40, Property Management (Subcontracts Dec. 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.222-40.
(f) Risk of loss of Government property.
(1) The Contractor shall take all reasonable precautions, and such other actions as may be required in accordance with paragraph (d) of FAR clause 52.222-40, to prevent the loss or destruction of Government property, including property on the militarily critical technologies list.
(2) Property Inventory.
(i) The Contractor shall establish, administer, and properly maintain an approved property management system in accordance with the Federal Property Management Regulations (41 CFR chapter 101), the Department of Energy (DOE) Property Management Regulations (41 CFR chapter 101, and other applicable Regulations.
(ii) A method for continuously improving property management practices through the identification of best practices established by ‘‘best in class’’ performers.
(iii) Approval of the Contractor’s property management system shall be contingent upon meeting the baseline inventory as provided in subparagraph (ii) of this clause.
(3) Property Inventory.
(a) Unless otherwise directed by the Laboratory Procurement Official, the Contractor shall conduct a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
(b) The term ‘‘contractor’s managerial personnel’’ as used in this clause means the Contractor’s directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction over the work under this contract.
(c) The Contractor shall include this clause in all cost reimbursable subcontracts.
36. PROPERTY (JAN 2013)
(a) FURNISHING OF GOVERNMENT PROPERTY.
(1) The Contractor reserves the right to furnish any material, equipment, services, or personal property of every kind and description purchased for the use of the Contractor under this contract, to a Government facility or Government official, or to the Contractor’s subcontractor, to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Laboratory reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Laboratory Procurement Official shall direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to the Government upon (1) issuance for use of such property in the performance of this contract, (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Laboratory, whichever first occurs. Property furnished by the Laboratory and purchased or furnished by the Contractor shall be subject to the conditions of the Laboratory Procurement Official, and the right of the Government to inspect, and to accept or reject, such property shall not relieve the Contractor from liability for such property, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
(b) Identification.
(1) To the extent directed by the Laboratory Procurement Official, the Contractor shall identify Government property coming into the Contractor’s possession or custody, by marking and segregating in such a way, satisfactory to the Laboratory, as shall indicate its ownership by the Government.
(2) The Contractor shall make such disposition of Government property which has come into the Contractor’s possession or custody of the Government Procurement Official or of the Laboratory Procurement Official may direct during the performance of the work or upon completion or termination of the contract. The Contractor may, upon such terms and conditions as the Laboratory Procurement Official may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Laboratory Procurement Official and the Contractor, if such property is not otherwise disposed of by the Government. If the Contractor determines the fair market value of any such property acquired by the, shall be supplied in reduction of ultimate cost to the Government or shall be otherwise dealt with as may be agreed to by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
(3) Identification.
(a) To the extent directed by the Laboratory Procurement Official, the Contractor shall identify Government property coming into the Contractor’s possession or custody, by marking and segregating in such a way, satisfactory to the Laboratory, as shall indicate its ownership by the Government.
(b) Disposition.
(1) The Contractor shall make such disposition of Government property which has come into the Contractor’s possession or custody of the Government Procurement Official or of the Laboratory Procurement Official may direct during the performance of the work or upon completion or termination of the contract. The Contractor may, upon such terms and conditions as the Laboratory Procurement Official may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Laboratory Procurement Official and the Contractor, if such property is not otherwise disposed of by the Government. If the Contractor determines the fair market value of any such property acquired by the, shall be supplied in reduction of ultimate cost to the Government or shall be otherwise dealt with as may be agreed to by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
(c) Protection of government property—management of high-risk property and classified materials.
(1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the Laboratory Procurement Official, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor’s possession or custody.
(2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhere to, the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices, and procedures for the handling, control and disposition of high-risk property and classified materials consistent with the policies, practices, and procedures for the handling, control and disposition of high-risk property and classified materials consistent with the policies, practices, and procedures for the handling, control and disposition of high-risk property and classified materials consistent with the policies, practices, and procedures for the handling, control and disposition of high-risk property and classified materials consistent with the policies, practices, and procedures for the handling, control and disposition of high-risk property and classified materials consistent with the policies, practices, and procedures for the handling, control and disposition of high-risk property.
social security number, labor classifications, hourly numbers 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 24 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 (a)(1) of this clause. The contractor and its subcontractors shall also allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in any location and at any time.

(e) Subcontractors. The contractor shall provide the services set forth in paragraphs (a) through (d) of this clause that may require or involve the employment of laborers and mechanics and require subcontractors in any location and at any time. The contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

39. INTEGRITY OF UNIT PRICES (OCT 2010)

(a) Except as otherwise agreed to in writing, in the Laboratory Procurement Officer, the contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract.

(1) In any contract for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all applicable and pertinent Federal wage and labor standards, specifications, regulations, schedules, and specifications, as may be prescribed by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

40. WARRANTIES OF SUPPLIES (OCT 2015)

(a) The Laboratory warrants that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. The contractor shall indemnify and hold harmless the Laboratory from all claims or actions for breach of warranty and against any liability, expense, or cost arising out of any such claims or actions. The contractor agrees to pay all costs and charges of any litigation, including court costs and attorney fees, incurred in connection with any such claims or actions.

41. WARRANTIES TO LABOR (OCT 2015)

(a) The Laboratory agrees to submit for the Laboratory's approval, to the extent and in the form and amount required by the Laboratory, any other contract or subcontract at any tier, which is then uninsured or is insured for less than the amount claimed, the contractor shall --

(1) Immediately notify the Laboratory and promptly furnish copies of all pertinent papers to the Laboratory. These liabilities are for --

(i) The Laboratory; or

(ii) The Laboratory Procurement Official shall treat as domestic for this contract.

(b) The contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) --

(1) For the portion of the contractor's own property, employees, liability, comprehensive general liability (bodily injury and property damage) insurance, and such other insurance as the Laboratory may require or approve, obtained by the contractor for work performed under this contract.

(2) The contractor may, with the approval of the Laboratory, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is entitled to rely on self-insurance as permitted by law, and any necessary certificates of self-insurance shall be submitted to the Laboratory.

(c) All insurance required by this paragraph shall be in a form and amount and for those periods as the Laboratory may require or approve and with insurers approved by the Laboratory.

(b) The contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) --

(1) For which the contractor is otherwise responsible under the express terms of any clause specified in the contract;

(2) For which the contractor has failed to insure or to maintain insurance as required by the Laboratory; or

(b) For which the contractor has failed to provide insurance or other satisfactory evidence of insurance.

(ii) Delivery of personal computer or workstation, the clause at FAR 52.223-15, Acquisition of EPEAT Registered Personal Computer (MAY 2014) shall apply.

When the contract requires the specifications or delivery of imaging equipment (i.e., copiers, digital duplicators, facsimile machines, mailing machines, multifunction devices, printers, or scanners, the contractor shall replace with similar services and charge to the Contractor the cost occasioned to the Laboratory thereby, or make an equitable adjustment in the contract price.

(d) The Laboratory does not require conformity of performance. This guide includes information concerning recycled content products, bio-based products, and products with labeled environmental attributes such as Leadership in Environmental, Energy, and Economic Performance. This guide is available on the Internet at: http://www.archives.gov/federal-register/executive-orders/disposition.html. The Contractor shall...

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

(a) The Contractor may terminate performance of work under this contract in whole or in part at any time, in part—

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

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

(b) The Contractor shall submit a claim to the Laboratory Procurement Official for any costs the Contractor incurs as a direct result of the termination. The Laboratory Procurement Official shall verify the costs, and the contractor shall be reimbursed for costs that have been verified. Costs include—

(i) The labor, materials, and services furnished by the Contractor under this contract;

(ii) The value of any property acquired or manufactured by the Contractor, and rights acquired by the Contractor or sold under this clause and not recovered by or credited to the Laboratory; and

(iii) Any other costs incurred by the Contractor as a direct result of the termination.

(c) The Contractor may seek review of the Laboratory Procurement Official’s decision by the Disputes Resolution Board of Contractors and the Federal Acquisition Service. The Contractor may also request a final settlement proposal from the Laboratory Procurement Official.

(d) Final settlement proposals and supporting data shall be submitted to the Disputes Resolution Board of Contractors and to the Federal Acquisition Service within 30 days of the date the contractor is notified of the termination.

(e) The Contracting Officer may adopt the proposed settlement as the final settlement.

(f) The Contractor may appeal the Disputes Resolution Board’s decision by filing a request for final agency decision with the Federal Acquisition Service within 30 days of receipt of notice of the decision of the Disputes Resolution Board.

(g) The Contracting Officer may further appeal a final decision of the Federal Acquisition Service by petitioning the United States Claims Court within 30 days of receipt of notice of such decision.

(h) The Contracting Officer may discontinue those costs as required by law or as directed by the Laboratory.

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

47. ANTI-KICKBACK PROVISIONS (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 performed in whole or in part under a prime contract).

(b) “Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(c) “Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

(d) “Subcontractor” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(e) “Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(f) “Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a subcontract entered into in connection with a prime contract.

(g) “Prime Contractor employee” as used in this clause, means any person who offers to furnish or furnishes general services of any kind under a prime contract.

(h) “Government of the United States” as used in this clause, means any agency, any person who offers to furnish or furnishes services of any kind under a prime contract and (2) includes any person who offers to furnish or furnishes services of any kind under a prime contract.

(i) “Government of the United States” as used in this clause, means any agency, any person who offers to furnish or furnishes services of any kind under a prime contract.
48. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

Applicable to Contracts Which Exceed $100,000

(a) Notwithstanding the provisions of the clause entitled “Allowable Cost and Payment,” the allowable indirect costs under this contract shall be determined by applying negotiated overhead rates for that period to returns upon the basis of the projects, as specified below:

(b) The contractor, as soon as possible but not later than ninety (90) days after the expiration of this fiscal year, or such other period as may be specified in the contracts, shall submit to the Laboratory, with a copy to the cognizant audit agency, a report detailing the overhead rates for that period and based on the contractor’s actual cost experience during that period, together with supporting cost data. Negotiated overhead rates by the contractor’s Laboratory shall be undertaken as promptly as practicable after receipt of the contractor’s proposal.

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

(d) The exclusion of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pursuance of establishment of final overhead for any period as a result of the contractor shall be reimbursed either at negotiated rates provided as in the contract, or at billing rates allowable to the Laboratory, subject to negotiation of the agreement rates for such period for that period, to prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be readjusted by mutual agreement, and (2) Billing rates for the period may be adjusted at the Laboratory. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

49. NEGOTIATED OVERHEAD RATES (AUG 2001)

(a) Notwithstanding the provisions of the clause entitled “Allowable Cost and Payment,” the allowable indirect costs under this contract shall be determined by applying negotiating overhead rates to returns upon the basis of the projects, as specified below:

(b) The contractor, as soon as possible but not later than ninety (90) days after the expiration of this fiscal year, or such other period as may be specified in the contracts, shall submit to the Laboratory, with a copy to the cognizant audit agency, a report detailing the overhead rates for that period and based on the contractor’s actual cost experience during that period, together with supporting cost data. Negotiated overhead rates by the contractor’s Laboratory shall be undertaken as promptly as practicable after receipt of the contractor’s proposal.

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

(d) The exclusion of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pursuance of establishment of final overhead for any period as a result of the contractor shall be reimbursed either at negotiated rates provided as in the contract, or at billing rates allowable to the Laboratory, subject to negotiation of the agreement rates for such period for that period, to prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be readjusted by mutual agreement, and (2) Billing rates for the period may be adjusted at the Laboratory. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

50. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2018)

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

(a) Definitions. As used in this clause—

“Agency” means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.

“Covered Federal action” means any of the following actions:

(1) Awarding any Federal contract.
(2) Making any Federal grant.
(3) Making any Federal loan.
(4) Entering into any cooperative agreement.
(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.
(6) “Indian tribe” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaska Native Corporations.

(7) “Influencing or attempting to influence” means making, with the intent to influence, any communication or appearance before an employee or officer of any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Indemnified” and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaska Native Corporations.

(8) “Influencing or attempting to influence” means making, with the intent to influence, any communication or appearance before an employee or officer of any agency, a Member of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(9) “Laboratory” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a special group representative organization, and any other instrumentality of a local government.

(10) “Officer” means an individual who holds a position in a governmental unit, including a public authority, a special district, a council of governments, a special group representative organization, and any other instrumentality of a local government.

(11) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(12) The term “appropriated funds” does not include profit or fee from a covered Federal action.

(b) In general.

(1) The Contractor shall obtain a declaration, including the certification and disclosure contained in paragraphs (c) and (d) of this clause, and the certification contained in paragraph (e) of this clause, from each subcontractor with respect to any covered Federal action.

(2) The Contractor shall maintain copies of all disclosures. Each subcontractor certification shall be retained in the records of the contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

(c) Certification.

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

(2) The Contractor shall maintain copies of all disclosures. Each subcontractor certification shall be retained in the records of the contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with the initial contract or if the Contractor did not file the OMB Standard Form LLL with the OMB within 90 days of the effective date of this clause, the Contractor shall provide a copy of all disclosures. Each subcontractor certification shall be retained in the records of the contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

(2) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with the initial contract or if the Contractor did not file the OMB Standard Form LLL with the OMB within 90 days of the effective date of this clause, the Contractor shall provide a copy of all disclosures. Each subcontractor certification shall be retained in the records of the contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

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

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended under paragraph (b) of this clause shall be subject to a civil penalty of not to exceed $1,500, as provided in 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be available.

(2) Contractors may rely without liability on the representation made by their contractors, agents, and subcontractors regarding the certification and disclosure contained in this clause.

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

(g) Cooperating with the Government.

(1) The Contractor shall obtain a declaration, including the certification and disclosure contained in paragraphs (c) and (d) of this clause, from each subcontractor with respect to any covered Federal action.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontracting officer, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the records of the prime Contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

(h) Cooperation with the Government.

(1) The Contractor shall provide a copy of all disclosures. Each subcontractor certification shall be retained in the records of the prime Contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

(2) The Contractor shall maintain copies of all disclosures. Each subcontractor certification shall be retained in the records of the prime Contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.

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

(i) Cooperation with the Government.

(1) The Contractor shall provide a copy of all disclosures. Each subcontractor certification shall be retained in the records of the prime Contractor for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for being employed as such in Federal work or for performing any work for the Government.
51. LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Laboratory more than (1) the estimated cost specified in the Schedule, or (2) if this is a cost-sharing contract, the Laboratory's share of the estimated cost specified in the Schedule. The contractor agrees to use reasonable efforts to perform the work specified in the Schedule and all obligations hereunder, consistent with this contract within the estimated cost, which, if this is a cost-sharing contract, includes both taxes and insurance. The Schedule specifies the amount currently available for payment by the Laboratory and allotted to this contract, the items covered, the Laboratory's share of the cost if this is a cost-sharing contract, and the period during which the amount allocated will remain available. The parties contemplate that the Laboratory will add additional funds incrementally to the amount up to the estimated cost specified in the Schedule exclusive of any fee. The contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Laboratory under this contract equals the total amount actually allotted by the Laboratory to the contract.

(b) 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 cost so far allotted to the contract by the Laboratory or (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share. The notice shall describe the work expected and the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(c) Sixty days before the end of the period specified in the Schedule, the contractor shall notify the authorized Laboratory Procurement Official in writing whenever the contractor believes that the estimated cost to the Laboratory for the period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(d) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule, or another agreed-upon date, the contractor may request the authorized Laboratory Procurement Official to terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the authorized Laboratory Procurement Official may terminate this contract on that later date.

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

(1) The Laboratory is not obligated to reimburse the contractor for costs incurred in excess of the total amount allotted by the Laboratory to this contract; and

(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--

(i) The amount then allotted to the contract by the Laboratory or, if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share. The Laboratory Procurement Official notifies the contractor in writing that the amount allotted by the Laboratory has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Laboratory to this contract.

(ii) The estimated cost shall be increased to the extent that (1) the amount allotted by the Laboratory or, if this is a cost-sharing contract, the amount then allotted to the contract by the Laboratory plus the contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(iii) No reimbursement, representation, or setoff shall be made in any form other than that specified in subparagraph (f)(2) above, or from any person other than the authorized Laboratory Procurement Official, shall affect the amount allotted to this contract by 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 total amount allotted by the Laboratory to this contract, whether incurred during the course of the contract or as a result of its termination.

(iv) When and to the extent that the amount allotted by the Laboratory to the contract is increased, any costs incurred by the contractor for work that are in excess of--

(i) The amount previously allotted by the Laboratory or, if this is a cost-sharing contract, the amount previously allotted by the Laboratory plus the contractor's corresponding share, shall be allowable to the Laboratory to the same extent as if incurred afterward, unless the authorized Laboratory Procurement Official determines that the contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable 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 of or, if this is a cost-sharing contract, for any costs in excess of the total amount allotted by the Laboratory to this contract, unless the excess costs were incurred during the course of the contract or as a result of its termination.

(f) 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 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 of or, if this is a cost-sharing contract, for any costs in excess of the total amount allotted by the Laboratory to this contract, unless the excess costs were incurred during the course of the contract or as a result of its termination.

(g) 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.

(h) If this contract is terminated or the estimated cost is not increased, the Laboratory and the contractor shall negotiate in good faith to determine whether the property produced or purchased under the contract, based upon the share of costs incurred by each.

52. ALLOWABLE COST AND PAYMENT (JUN 2011)

(a) Invoicing

(1) The Laboratory will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more than once every 2 weeks, for work performed during the current 2-week period, or from any person other than the Authorized Laboratory Procurement Official in accordance with Federal Acquisition Regulation (FAR) Subpart 42.2, as supplemented by supplement 932.2 of the Department of Energy Acquisition Regulations (DEAR) in effect at the time of making the payment. The Contractor may submit to an authorized representative of the Laboratory a statement of progress, indicating the extent to which the Government representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Change financing payments are not subject to the interest provision of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.212-21(a)(7).

(3) The designated payment office will make interim payments for contract financing on the 30th day after the designated billing office receives a proper property request. In the event that the Laboratory requires an audit or other review of a specific payment request to ensure that the payment is allowable, the amount of the interim payment will be withheld until the audit or other review is completed.

(b) Reimbursable costs.

(1) 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--

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor is not delinquent in paying for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying for items or services purchased directly for the contract;

(iii) The amount of financing payments to subcontractors, provided payments are not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments are not delinquent and the contractor is not delinquent in paying for items or services purchased directly for the contract;

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

(C) Direct labor;

(D) Direct material;

(E) Other direct-in-house costs; and

(F) Property interest on capital costs as defined in paragraph (d) of this clause.

(2) Accrued costs. Accrued costs, interest and capital cost payments under employee pension plans shall be excluded until actually paid unless--

(i) The Contractor's practice is to make contributions to the retirement fund in the same manner as if incurred afterward, or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the quarter in which it was incurred.

(3) The amount of financing payments to subcontractors, provided payments are not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for--

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments are not delinquent;

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

(C) Direct labor;

(D) Direct material;

(E) Other direct-in-house costs; and

(F) Property interest on capital costs as defined in paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designate performance of services or furnishing of materials at the Laboratory's expense or no cost to the Government shall be disregarded for purposes of reimbursement under Government contracts.

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

(d) Finalize cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with paragraph 42.1.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall submit an adequate final indirect cost rate proposal to the Laboratory within 60 days after receipt of the Schedule. The Contractor shall support its proposal with adequate supporting data. The Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the proposal. The determination of the indirect cost rates shall be subject to audit by the Government and the Contractor and granted in writing by the Laboratory Procurement Official. The Contractor shall support its proposal with adequate supporting data.

(3) Overhead expenses (indirect cost pool).

(a) The Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the proposal. The determination of the indirect cost rates shall be subject to audit by the Government and the Contractor and granted in writing by the Laboratory Procurement Official. The Contractor shall support its proposal with adequate supporting data.

(b) Overhead expenses (indirect cost pool). Schedule of claimed indirect costs and expenses shall be supported by the Contractor in accordance with the following:

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

(B) General and Administrative expenses (final indirect cost pool).

(c) Facilities capital cost of money factors computation.

(d) Facilities capital cost of money factors computation.

(e) Facilities capital cost of money factors computation.

(f) Facilities capital cost of money factors computation.

(g) Facilities capital cost of money factors computation.

(h) Facilities capital cost of money factors computation.
(G) Reconciliation of books of account (i.e., General Ledger) and claimed direct costs by major cost element.

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

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract in effect whose time and final payment shall be completed in the current and prior fiscal years.

(J) Subcontractor information. Listing of subcontracts awarded to companies for the benefit of the prime contractor or subcontractor (include prime and subcontract numbers; subcontract value and award type: amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

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

(L) Reconciliation of audit per IRS Form 941 to total labor cost distribution.

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

(N) Certification of final indirect costs (see 52.243-2, Certification of Final Indirect Costs).

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

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

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

(B) General Organizational information and Executive compensation for the five most highly compensated executives. See 31.205-69.

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

(D) Description of contract accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year’s submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year’s submission).

(F) Certified statement of an independent certified public accountant indicating that the Contractor is in compliance with generally accepted accounting principles and the requirement to authorize subsequent changes in the determination of allowable costs.

(G) Management letter from external CPA’s concerning any internal control weaknesses.

(H) Action that has been taken and will be implemented to correct the weaknesses identified in the management letter from paragraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

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

(K) Federal and State income tax returns.

(L) Minutes from board of directors meetings.

(M) Listing of delay claims and termination claims submitted which contain cost implications related to the subject fiscal year.

(N) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowance limitations, and billing limitations.

(v) The Contractor shall update the bills on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (O)(4)(i) of this section, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the specific periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract(s) and/or subcontract(s) and the advance approval agreements or other contract terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding shall be signed by the Contractor upon execution.

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

(5) Within 120 days (or longer period if approved in writing by the Laboratory Procurement Officer after settlement of the final annual indirect cost rates for all years of a physically completed contract, the contractor shall submit a complete invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime cost auditor is responsible for setting subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the Laboratory Procurement Office.

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

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

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

(ii) This determination constitutes the final decision of the Laboratory Procurement Office.

(6) Billing rates. Until final annual indirect cost rates are established for any period, the Government will reimburse the Contractor at billing rates established by the Laboratory Procurement Official or by an authorized contracting officer. The Government shall not make any advance payments or adjustments for any costs for which the Contractor has been reimbursed by the Government.

(7) Final payment. (1) Upon approval of a final completion invoice or voucher submitted by the Contractor in accordance with paragraph (O)(5) of this clause, and upon the Contractor’s compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

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

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

g. Subcontracts. The Contractor further shall not permit any such labor force to be employed in any case where the labor force does not meet the conditions of paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including all subcontracts at or below the simplified acquisition threshold) for any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

h. Completion of the Work.

1. The Comptroller General of the United States, or an authorized representative, shall have the right to accept and inspect any of the products, supplies, or services furnished under this contract or any subcontract hereunder and to review any accounting records of the Contractor or subcontractor in connection therewith.

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

58. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

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

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

59. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO REPORT VIOLATIONS OF THE FEDERAL CORRUPTION LAWS (APR 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Employee whistleblower protection established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908-1.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as interpreted in section 9.869 of the Federal Acquisition Regulation.

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

60. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

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

(1) Means any item of supply (including commercial off-the-shelf material) that-

(i) Is a commercial item (as defined in paragraph (1) of the definition in FAR 16.1002-2(a));

(ii) Is 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. 40102(e), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government’s interests. Offered to a subcontractor for a commercial item, a COTS item, the Contractor shall not enter into any subcontract, in excess of $35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available-off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in addition to any other required written disclosure to the agency Office of Inspector General or applicable law enforcement (as defined in paragraph (b)(7)(ii) of this clause) and such other law enforcement) that alleges a Contractor employee, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause.

(e) The requirements of paragraph (b)(7)(ii) of this clause apply.

(f) Provide or arrange housing that meets to fail the host country housing and safety standards.

(g) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause applies.

61. COMBATING TRAFFICKING IN PERSONS (MARCH 2015)

(a) Definitions. As used in this clause-

‘Abuse of authority’ means any act, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

‘Compel’ means-

(1) Threats of serious harm to or physical restraint against any person;

(2) If the allegation may be associated with more than one contract, the Contractor shall provide written notification to the Contracting Officer and the agency Inspector General immediately of-

(i) Any child that has been subjected to severe forms of trafficking in persons-meaning knowingly providing or obtaining the labor or services of a person-

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

(iii) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the child were to refuse to perform such labor, or perform such services, or to continue to perform such labor or services, that person or another person would suffer serious harm or physical restraint;

(iv) By means of any scheme, plan, or pattern to cause the person to believe that, if the child were to refuse to perform such labor, or perform such services, or to continue to perform such labor or services, that person or another person would suffer serious harm or physical restraint;

(v) By the abuse or threat of abuse of law or the legal process.

Involuntary servitude includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint;

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

‘Sex trafficking’ means inducing, procuring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontractor means a contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any contractor, subcontractor, or their agents that shall-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identity or immigration documents, such as passports or driver’s licenses, regardless of issuing authority;

(5) Use military or federal facilities for any purpose other than for the performance of a contract or subcontract, or for another purpose approved by the United States Government,

(6) Sell or rent real property, or other property or facilities over the simplified acquisition threshold

(7) Fails to provide return transportation or pay for the cost of return transportation upon the end of employment.

(8) Fails to provide transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause applies.

(9) Provide or arrange housing that meets to fail the host country housing and safety standards.

(10) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required real property work document in writing. Such written work document shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause applies.

(f) The requirements of paragraphs (b)(7)(ii) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking.

(g) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(h) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed inside the United States), except that-

(iii) Procure commercial sex acts during the period of performance of the contract;

(iv) Subcontractor means a contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means an employee, subcontractor, or their agent that shall-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identity or immigration documents, such as passports or driver’s licenses, regardless of issuing authority;

(5) Use military or federal facilities for any purpose other than for the performance of a contract or subcontract, or for another purpose approved by the United States Government,

(6) Sell or rent real property, or other property or facilities over the simplified acquisition threshold

(7) Fails to provide return transportation or pay for the cost of return transportation upon the end of employment.

(8) Fails to provide transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause applies.

(9) Provide or arrange housing that meets to fail the host country housing and safety standards.

(10) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause applies.

(11) Procure commercial sex acts during the period of performance of the contract;
(6) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in:

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined the Contractor non-compliant;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause in this contract; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, as well as taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) Full cooperation.

(1) The Contractor shall, at a minimum-

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the offense;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 79), E.O. 13267, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Destroy all evidence or documents of or witnesses to prohibited activities prior to returning to the country from which the employee was recruited, shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not:

(i) Require the Contractor to disclose its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney-client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from:

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) Compliance plan.

(1) This paragraph (h) applies to any portion of the contract that:

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate:

(i) To the size and complexity of the contract, and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of Government representatives expected to be employed, and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(iii) Minimum requirements. The compliance plan must include, at a minimum, the following:

(A) An awareness program to inform employees about the Government’s policy prohibiting trafficking-related activities described in paragraph (b) of this clause, that the Contractor will follow, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the U.S. Department of State’s Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(B) A process for employees to report any indication of human trafficking, consistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the toll-free phone number of the Global Human Trafficking Hotline at 1-888-37-TIP-4U and its email address at help@befree.org.

(C) A record and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or comparable wages.

(D) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(E) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontractors, or subcontractor employees that have engaged in such activities.

(2) Posting.

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

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

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

(A) It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(B) It has conducted due diligence, either:

(A) To the best of the Contractor’s knowledge and belief, neither it nor any of its agents, subcontractors, or any of their agents is engaged in any such activity; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor shall have taken the appropriate remedial and referral actions.

(i) The Contractor shall include the substance of this clause, including this paragraph (h), in all subcontracts and in all contracts with agents.

62. RESEARCH MISCONDUCT (JUL 2005)

(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined in this clause. The Contractor shall provide sufficient personnel and resources to conduct investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the Laboratory Procurement Official (LPO), the Contractor must conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer, the contracting officer's delegate, the ordering office, and the LPO in writing of the initial inquiry being initiated. The Contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of the record leading to the misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

(2) If the investigation results in a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The findings of the investigation must include the record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the LPO if an initial inquiry supports a formal investigation and, if required, the Contracting Officer, the Contracting Officer’s delegate, the initiating office, and the LPO of the results of the investigation and any subsequent adjudication. When an investigation is complete, the Contractor will forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the contractor’s adjudicating official, the adjudicating official's decision on any corrective action taken or planned, and the subject's written response (if any).

(c) The Laboratory may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct in accordance with the requirements of this clause.

(i) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(ii) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(iii) Laboratory involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(iv) The allegation involves possible criminal misconduct.

(d) 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.

(a) The Contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution.

(i) Safeguards include: protection against retaliation; fair and objective procedures for investigating and resolving allegations; protecting and relieving interests of witnesses; and protecting the reputations of the subjects of allegations.

(ii) The Contractor shall also provide the subjects of allegations confidentiality regarding any and all information of research misconduct that are not released in an adverse action.

(iii) Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and a reasonable opportunity to respond and to support the allegation or develop evidence in a response to an allegation and notification of any findings of research misconduct.

(ii) Objectivity and Expertise.

(a) The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflicts of interest.

(b) The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the initial investigation or inquiry or is otherwise separate organizationally from the element that conducted the inquiry or investigation.

(i) Timeliness.

(a) The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct in a timely manner. Generally, an investigation should be completed within 120 days of initiation, and adjudications should be completed within 60 days of the conclusion of the investigation.

(ii) Confidentiality.

(a) To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(iii) Remediation and Sanction.

(a) If the contractor finds that research misconduct has occurred, it shall determine the appropriate actions, both formal and informal, that should be taken.

(b) Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in a professional manner. The contractor shall coordinate remedial actions with the LPO. The contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with all applicable personnel laws, policies, and procedures, and 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 conduct.

(3) The Laboratory reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms of the award instrument and applicable laws and regulations. However, the contractor's good faith administration of this clause and the effectiveness of its remedial actions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If the Laboratory pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(4) Definitions.

(a) “Adjudication” means a formal finding or a record of investigation of alleged research misconduct subject to determination as to whether and what corrective actions and sanctions should be taken.

(b) “Sanction” means making up data or results and recording or reporting them.

(c) “Sanctions” means manipulating research materials, equipment, or processes, or manipulating data or results such that the research is not accurately represented in the research record.

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

(3) “Research misconduct” means information that is used to determine whether an allegation or apparent instance of misconduct warrants an investigation.

(i) “Investigation” means the formal and informal actions.

(ii) “Plagiarism” means the appropriation of another person's ideas, processes, results, or ideas without giving appropriate credit.

(iii) “Research misconduct” means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in
The Contractor shall comply with all applicable U.S. export control laws and regulations.

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

The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nonproliferation objectives. Although much of the work Argonne and its employees undertake to further its research and technology development mission is exempted from U.S. export control regulations, the laboratory must abid by all of the export control laws and regulations to ensure its compliance with export controls.

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

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

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

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

To further ensure that you do not run the risk of exporting sensitive information or technology when traveling abroad, keep the following guidelines in mind that without having acquired an export license prior to your trip, presentations and discussions must be limited to only those topics that are not on the DOE Sensitive Subjects List and the Argonne Sensitive Technologies list.

67. CONFLICTS IN DOCUMENTATION (MAY 2001)

Any discrepancy, inconsistency, or conflict in the SCHEDULE or in or one of more of the documents identified in the Article entitled “Applicable Documentation” which can be reasonably ascertained by the Contractor shall be immediately submitted to the Laboratory for its written decision. Any work undertaken by the contractor without such decision shall be at the contractor's own risk.

68. RIGHTS TO PROPOSAL DATA (AUGUST 2001)

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

69. ENVIRONMENTAL PROTECTION (MAY 2001)

In performing this contract, the contractor shall comply with the requirements set forth in all applicable Federal and non-Federal environmental protection laws, codes, orders, Executive Orders, regulations, and directives.

70. LIMITATIONS PERIOD (MAY 2001)

Any action brought by the contractor for breach of contract, request for equitable adjustment, or any other claim arising under this contract must be initiated within 30 days of receiving written notice that the action has been taken. Any action brought by the contractor that is not timely filed shall be barred from further pursuit.

71. VEHICLE LIABILITY INSURANCE COVERAGE (AUGUST 2001)

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

72. ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2013)

(a) Definitions. As used in this clause—

- (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of, a traffic light, stop sign, or otherwise.
- (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of an active roadway and has halted in a location where one can safely remain stationary.
- (3) Vehicle means any motor vehicle, including any vehicle customarily utilized by the contractor during the course of work, that is designed to be driven on a roadway.
- (4) Texting means reading or sending a text message into any handheld or other electronic device, including for the purpose of short message service, emailing, instant messaging, obtaining navigational information, or engaging in any other text message activity.

(b) Prohibitions.

- (1) Adopt and enforce policies that ban texting while driving.
- (2) Conduct initiatives in a manner commensurate with the size of the business, such as:
  - (i) Establishment of new rules and programs or re-evaluation of existing programs and policies.
  - (ii) Education, awareness, and other outreach to employees about the safety risks associated with multi-tasking and driving.

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

73. INTEGRATION CLAUSE (MAY 2001)

This contract represents the full understanding of the parties and is the entire agreement between the parties. 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.

74. TECHNICAL STANDARDS PROGRAM (FEB 2011)

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

1. In the performance of this contract, the Contractor, when participating in the development of Department of Energy (DOE) Technical Standards, conducting technical standards review activities, and selecting technical standards for use to support assigned DOE missions and functions.
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.

75. 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 trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation may constitute criminal conduct, the Laboratory may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.
# Suspect/Counterfeit Bolt Headmark List

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

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

<table>
<thead>
<tr>
<th>Grade 5</th>
<th>Grade 8</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="Grade 5" /></td>
<td><img src="image" alt="Grade 8" /></td>
</tr>
</tbody>
</table>

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

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

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

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

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

## Grade 8.2 fastener with the following headmark:

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

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

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

Headmarkings are usually raised – sometimes indented.

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