

APPENDIX A
AMES LABORATORY TERMS AND CONDITIONS
(For Commercial Items and Services, April 2016)

The clause dates provided are for the most recent versions of the clause current as of any contract issuance date. One or more clauses may have been updated prior to award. For those clauses which may have been superseded, the most recent version is incorporated despite the date of the clause listed. Otherwise the clauses will be applicable with the dates listed. Many of the clauses contain slight revisions to the FAR. For those clauses, the title indicates the paragraph is “based on” a FAR clause.

Definitions

The following terms shall have the meanings below:

“Ames Laboratory,” “Laboratory,” or “DOE Facility” means The Ames Laboratory, operated by Iowa State University acting under Prime Contract No. DE-AC02-07CH11358 between Iowa State University and the Government for the operation of Ames Laboratory.

“Contractor” or “Subcontractor” means any person or organization that has entered into this Agreement with Ames Laboratory.

“Government” means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative(s) thereof.

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1. ACCEPTANCE (ISU APR 2009)

Acceptance of this Purchase Order must be in accordance with and strictly limited to these Terms and Conditions and the terms and conditions set forth or referenced in the Purchase Order (hereinafter called the "contract"). An attempted acknowledgment or acceptance which contains provisions conflicting or additional to such terms and conditions or which varies any term or condition shall have no force or effect. Performance by the contractor without an effective acknowledgment shall be deemed to be performance in accordance with the terms and conditions of this contract.

2. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (FAR 52.203-6 SEPT 2006, ALT I OCT 1995)

- (a) Except as provided in paragraph (b) below, the contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in paragraph (a) of this clause does not preclude the contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).
- (c) The contractor agrees to incorporate the substance of this Clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

3. ANTI-KICKBACK PROCEDURES (FAR 52.203-7 MAY 2014)

- (a) Definitions.
 - (1) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
 - (2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - (3) "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.
 - (4) "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.
 - (6) "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 prime contract.
 - (7) "Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier subcontractor.
 - (8) "Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.
- (b) 41 U.S.C. Chapter 87, Kickbacks, prohibits any person from --
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.
- (c)
 - (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report, in writing, the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.
 - (3) The contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the Prime Contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this Clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
 - (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

4. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (FAR 52.203-12 OCT 2010)

- (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:
 - (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.
 - "Indian tribe" and "tribal organization," have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.

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

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

“Officer or employee of an agency,” as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

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

“Reasonable compensation,” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

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

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

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

- (b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

- (1) The term appropriated funds does not include profit or fee from a covered Federal action.
- (2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

- (c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

- (1) Agency and legislative liaison by Contractor employees.
 - (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency of Congress is permitted at any time.
 - (ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-
 - (A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or
 - (B) The application or adaptation of the person’s products or services for an agency’s use.
 - (iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (2) Professional and technical services.
 - (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid,

proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii).
- (iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted under this clause.
- (d) Disclosure.
 - (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
 - (2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.
- (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 form to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.
- (g) Subcontracts.
 - (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.
 - (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 subcontractor, submit to the Contracting officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
 - (3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$150,000.

5. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (FAR 52.204-9 a, d JAN 2011)

- (a) The Contractor shall comply with agency personal identity verification procedures as provided by the Laboratory that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (d) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have physical access to a federally-controlled facility or access to a Federal-controlled information system.

6. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT (based on FAR 52.209-6 OCT 2015)

- (a) Definition. "Commercially available off-the-shelf (COTS)" item, as used in this clause- Means any item of supply (including construction material) that is-
 - (i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101;
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - (iv) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- (b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the shelf item, the Contractor shall not enter into any subcontract, in excess of \$35,000 with a subcontractor 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 any of its principals, is or is not debarred, suspended or proposed for debarment by the Federal Government.
- (d) A corporate officer of designee of the Contractor shall notify the Ames Laboratory in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available (off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
 - (4) The systems and procedures the Contractor has established to ensure that is fully protecting the Government's interests when dealing with subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.
- (e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause,

including this paragraph (e) (appropriate modified for the identification of the parties), in each subcontract that-

- (1) Exceed \$35,000 in value; and
- (2) Is not a subcontract for commercially available off-the-shelf items.

7. INTEGRITY OF UNIT PRICES (FAR 52.215-14 OCT 2010)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) When requested by the Laboratory Procurement Official, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.
- (c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

8. UTILIZATION OF SMALL BUSINESS CONCERNS (FAR 52.219-8 OCT 2014)

- (a) Definitions. As used in this contract—
 - “HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
 - “Service-disabled veteran-owned small business concern”-
 - (1) Means a small business concern-
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
 - (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
 - “Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
 - “Small disadvantaged business concern,” consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that--
 - (1) (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
 - (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.
 - “Veteran-owned small business concern” means a small business concern-
 - (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
 - (2) The management and daily business operations of which are controlled by one or more veterans.
 - “Women-owned small business concern” means a small business concern—
 - (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (2) Whose management and daily business operations are controlled by one or more women.
- (b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- (c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
 - (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.
 - (2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting SBA. Options for contacting the SBA include –
 - (i) HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;
 - (ii) In writing to the Director/HUB; U.S. Small Business Administration, 409 3rd ST SW, Washington DS 20416; or
 - (iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

9. PROHIBITION OF SEGREGATED FACILITIES (FAR 52.222-21 APR 2015)

- (a) Definitions. As used in this clause.
 "Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
 "Segregated facilities," means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
 "Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
- (b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

10. EQUAL OPPORTUNITY (FAR 52.222-26 APRIL 2015)

- (a) Definition. As used in this clause.
 "Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
 "Sexual orientation" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
 "United States," means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (3) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).
- (c) (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (2) The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to—
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Laboratory or the Government that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Laboratory or the Government advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the contractor has filed within the 12 months preceding the date of contract award, the contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter

under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

- (9) 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, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Laboratory or the Government may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor 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.

11. EQUAL OPPORTUNITY FOR VETERANS (FAR 52.222-35 OCT 2015)

- (a) Definitions. As used in this clause—
 “Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.
- (b) 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.
- (c) 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.

12. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (FAR 52.222-36 JUL 2014)

- (a) Equal Opportunity Clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.
- (b) 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, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, 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.

13. EMPLOYMENT REPORTS VETERANS (FAR 52.222-37 OCT 2015)

- (a) Definitions. As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “active duty wartime or campaign badge veteran,” and “recently separated veteran,” have the meanings given in FAR 22.1301.
- (b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on —
 - (1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are disabled veterans, other protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans.
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (i.e., active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and
 - (3) The maximum number and the minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.
- (c) The Contractor shall report the above items by completing the Form VETS-100A, entitled “Federal Contractor Veterans’ Employment Report (VETS-100A Report)”.
- (d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.
- (e) The employment activity report required by paragraph (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—
 - (1) As of the end of any pay period between July 1 and August 31 of the year the report is due, or
 - (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.
- (g) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

14. NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (FAR 52.222-40 DEC 2010)

- (a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (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 National Labor Relations Act and engage in activities related to the performance of the contract.
 - (2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."
- (b) This required employee notice, printed by the Department of Labor, may be—
 - (1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
 - (2) Provided by the Federal contracting agency if requested;
 - (3) Downloaded from the Office of Labor-Management Standards Web site at www.dol.gov/olms/regs/compliance/EO13496.htm; or
 - (4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.
- (c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.
- (d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.
- (e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.
- (f) Subcontracts.
 - (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 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 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.
 - (2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 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.
 - (4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

15. COMBATING TRAFFICKING IN PERSONS (based on FAR 52.222-50 MAR 2015)

- (a) Definitions – As used in this clause—
 - “Agent” means any individual, including a director, an officer, and employee, or an independent contractor, authorized to act on behalf of the organization.
 - “Coercion” means (1) threats of serious harm to or physical restraint against any person; (2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (3) the abuse or threatened abuse of the legal process.
 - “Commercially available off-the-shelf (COTS) item” means (1) Any item of supply (including construction material) that is (i) a commercial item (as defined in paragraph (1) of the definition at FAR 2.101); (ii) sold in substantial quantities in the commercial marketplace; and (iii) offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and (2) does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
 - “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.
 - “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.
 - “Employee” means an employee of the Contractor directly engaged in the performance of work under this contract who has other than a minimal impact or involvement in contract performance.
 - “Forced Labor” means knowingly providing or obtaining the labor or services of a person (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened 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 the person to believe that, if the person did not enter into or continue such conditions, that person or another person would suffer serious harm or physical restraint; or (2) of the abuse or threatened abuse of the legal process.
 - “Severe forms of trafficking in persons” means (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (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 subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or another subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or service to or for a prime contractor or another subcontractor.

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

(b) Policy. The United States Government has adopted policy regarding trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees and their agents shall not –

- (1) Engage in severe forms of trafficking in person 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 drivers’ licenses, regardless of issuing authority;
- (5)
 - (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable the hazardous nature of the work;
 - (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees recruitment fees;
- (7)
 - (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment –
 - (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or
 - (B) 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, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that –
 - (ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is –
 - (A) Legally permitted to remain in the country of employment and who chooses to do so; or
 - (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;
 - (iii) The requirements of paragraph (b)(7)(i) 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 in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor 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 apply.

(c) Contractor Requirements. The Contractor shall -

- (1) Notify its employees and agents of (i) the United States Government’s policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and (ii) the actions that will be taken against employees or agents for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees, agents or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification. The contractor shall inform the Laboratory Subcontract Administrator immediately of (i) any credible information it receives from any source (including host country law enforcement) that alleges a contractor employee, subcontractor, or subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and (2) If the allegation may be associated with more than one contract, the Contractor shall inform the Laboratory Subcontract Administrator for the contract with the highest dollar value.

(e) Remedies. In addition to other remedies available to the Laboratory, 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 this 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 contractor non-compliance; (5) Declining to exercise available options under the contract; (6) termination of the contract for default or cause, in accordance with the termination clause of this contract; or (7) suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Laboratory Subcontract Administrator 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, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
- (2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Laboratory Subcontract Administrator 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 conduct;
 - (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 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
- (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.
- (2) The requirement for fully 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 waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
 - (ii) Require any officer, director, owner, employee, or agent of the contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
 - (iii) Restrict the contractor from –
 - (A) Conducting an internal investigation; or
 - (B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.
- (h) Compliance plan.
 - (1) This paragraph (h) applies to any portion of the contract that –
 - (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
 - (ii) Has an estimated value that exceeds \$500,000.
 - (2) The contractor shall maintain a compliance plan during the performance of the contract that is 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 Laboratory, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
 - (3) Minimum requirements. The compliance plan must include, at a minimum, the following:
 - (i) An awareness program to inform contractor employees about the Government’s policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.
 - (ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.
 - (iii) A recruitment 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 explains any variance.
 - (iv) A housing plan, if the contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
 - (v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.
 - (4) Posting.
 - (i) The contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not 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 worker in writing.
 - (ii) The contractor shall provide the compliance plan to the Laboratory Subcontract Administrator upon request.
 - (5) Certification. After receiving an award, the contractor shall submit a certification to the Laboratory Subcontract Administrator that –
 - (i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and
 - (ii) After having conducted due diligence, either –
 - (A) To the best of the Contractor’s knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or
 - (B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions.
 - (i) Subcontracts.
 - (1) The contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that –
 - (A) 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
 - (B) Has an estimated value that exceeds \$500,000.
 - (2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

16. EMPLOYMENT ELIGIBILITY VERIFICATION (FAR 52.222-54 OCT 2015)

- (a) *Definitions.* As used in this clause—
 - “Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, (after November 27, 2009 in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) Enrollment and verification requirements.

- (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—
 - (i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
 - (ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and
 - (iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).
 - (2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—
 - (i) *All new employees.*
 - (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or
 - (B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or
 - (ii) *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 (but see paragraph (b)(4) of this section).
 - (3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
 - (4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986, (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—
 - (i) Enrollment in the E-Verify program; or
 - (ii) Notification to E-Verify Operations of the Contractor’s decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).
 - (5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.
 - (i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor’s MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.
 - (ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
- (c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
- (d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—
- (1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

- (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.
- (e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—
- (1) Is for—
- (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
 - (ii) Construction;
- (2) Has a value of more than \$3,500; and
- (3) Includes work performed in the United States.

17. MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (based on FAR 52.222-55 DEC 2015)

- (a) Definitions. As used in this clause –
- “United States” means the 50 states and the District of Columbia.
- “Worker” –
- (1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and –
 - (i) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);
 - (ii) Other than individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and
 - (iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.
 - (2) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).
 - (3) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.
- (b) Executive Order Minimum wage rate.
- (1) The Contractor shall pay to workers, while performing work in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.
 - (2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor’s Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.
 - (3)
 - (i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers’ compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.
 - (ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.
 - (iii) The Laboratory Procurement Official will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.
 - (4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
 - (5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.
 - (6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker’s wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.
 - (7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.
 - (8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.
 - (9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.
 - (10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

- (c) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition –
 - (i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;
 - (ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under [29 U.S.C. 214\(c\)](#) are covered; and
 - (iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor’s Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.
- (2) This clause does not apply to –
 - (i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;
 - (ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to –
 - (A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).
 - (B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).
 - (C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).
- (d) Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and condition of employment.
- (e) Payroll Records.
 - (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:
 - (i) Name, address, and social security number;
 - (ii) The worker’s occupation(s) or classification(s);
 - (iii) The rate or rates of wages paid;
 - (iv) The number of daily and weekly hours worked by each worker;
 - (v) Any deductions made; and
 - (vi) Total wages paid.
 - (2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon the request of the Laboratory Procurement Official.
 - (3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.
 - (4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Laboratory Procurement Official’s own action, payment shall be withheld until such time as the noncompliance is corrected.
 - (5) Nothing in this clause limits or otherwise modifies the Contractor’s payroll and recordkeeping obligations, if any, under the Service Contract Lab Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.
- (f) Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.
- (g) Withholding. The Laboratory Procurement Official, upon his and her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.
- (h) Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor’s compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.
- (i) Antiretaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.
- (j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.
- (k) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in in whole or in part in the United States.

18. ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (based on FAR 52.223-13 JUNE 2014)

(a) Definitions as used in this clause –

“Imaging equipment” means the following products:

- (1) *Copier*- A commercially available imaging product with a sole function of the production of hard copy duplicates from graphic hard-copy originals. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as copiers or upgradeable digital copiers (UDCs).
- (2) *Digital duplicator*- A commercially available imaging product that is sold in the market as a fully automated duplicator system through the method of stencil duplicating with digital reproduction functionality. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as digital duplicators.
- (3) *Facsimile machine (fax machine)*-A commercially available imaging product whose primary functions are scanning hard-copy originals for electronic transmission to remote units and receiving similar electronic transmissions to produce hard-copy output. Electronic transmission is primarily over a public telephone system but also may be via computer network or the Internet. The product also may be capable of producing hard copy duplicates. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as fax machines.
- (4) *Mailing machine*-A commercially available imaging product that serves to print postage onto mail pieces. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as mailing machines.
- (5) *Multifunction device (MFD)*-A commercially available imaging product, which is a physically integrated device or a combination of functionally integrated components, that performs two or more of the core functions of copying, printing, scanning, or faxing. The copy functionality as addressed in this definition is considered to be distinct from single-sheet convenience copying offered by fax machines. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as MFDs or multifunction products.
- (6) *Printer*-A commercially available imaging product that serves as a hard-copy output device and is capable of receiving information from single-user or networked computers, or other input devices (e.g., digital cameras). The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as printers, including printers that can be upgraded into MFDs in the field.
- (7) *Scanner*-A commercially available imaging product that functions as an electro-optical device for converting information into electronic images that can be stored, edited, converted, or transmitted, primarily in a personal computing environment. The unit is capable of being powered from a wall outlet or from a data or network connection. This definition is intended to cover products that are marketed as scanners.

(b) Under this contract, the Contractor shall deliver, furnished for Government use, or furnish for Contractor use at Ames Laboratory, only imaging equipment that, at the time of submission of proposals and at the time of award was EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see www.epa.gov/PEAT.

19. ACQUISITION OF EPEAT®-REGISTERED TELEVISIONS (based on FAR 52.223-14 JUNE 2014)

(a) Definitions. As used in this clause –

“Television” or “TV” means a commercially available electronic product designed primarily for the reception and display of audiovisual signals received from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other digital or analog sources. A TV consists of a tuner/receiver and a display encased in a single enclosure. The product usually relies upon a cathode-ray tube (CRT), liquid crystal display (LCD), plasma display, or other display technology. Televisions with computer capability (e.g., computer input port) may be considered to be a TV as long as they are marketed and sold to consumers primarily as televisions.

(b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for Contractor use at Ames Laboratory, only televisions that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.

(c) For information about EPEAT®, see www.epa.gov/PEAT.

20. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (based on FAR 52.223-15 DEC 2007)

When the contract requires the specification or delivery of energy consuming products for use in the Ames Laboratory, the contractor will specify or deliver EnergyStar® qualified product or products in the upper 25 percent efficiency for all similar products as designated by the DOE’s Federal Energy Management Program’s (FEMP) program, whichever may be applicable. These requirements apply to the Contractor (including any subcontractor) unless the energy-consuming product is not listed in the EnergyStar® Program or FEMP, or otherwise approved in writing by the Laboratory Subcontract Administrator. Information about these products is available for EnergyStar® at: <http://www.energystar.gov/products> and FEMP at http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm.

21. ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (based on FAR 52.223-16 OCT 2015)

(a) Definitions. As used in this clause-

“Computer” means a device that performs logical operations and processes data. Computers are composed of, at a minimum,

- (1) A central processing unit (CPU) to perform operations.
- (2) User input devices such as a keyboard, mouse, digitizer, or game controller; and
- (3) A computer display screen to output information. Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations. Although computers must be capable of using input devices and computer displays, as noted in (2) and (3) above, computer systems do not need to include these devices on shipment to meet this definition. This definition does not include server computers, gaming consoles, mobile telephones, portable hand-held calculators, portable digital assistants (PDAs), MP3 players, or any other mobile computing device with displays less than 4 inches, measured diagonally.

“Computer display” means a display screen and its associated electronics encased in a single housing or within the computer housing (e.g., notebook or integrated desktop computer) that is capable of displaying output information from a computer via one or more inputs such as a VGA, DVI, USB, DisplayPort, and/or IEEE 1394-2008™, Standard for High Performance Serial Bus. Examples of computer display technologies are the cathode-ray tube (CRT) and liquid crystal display (LCD)

“Desktop computer” means a computer where the main unit is intended to be located in a permanent location, often on a desk or on the floor.

Desktops are not designed for portability and utilize an external computer display, keyboard, and mouse. Desktops are designed for a broad range of home and office applications.

“Integrated desktop computer” means a desktop system in which the computer and computer display function as a single unit that receives its AC power through a single cable. Integrated desktop computers come in one of two possible forms:

- (1) A system where the computer display and computer are physically combined into a single unit; or
- (2) A system packaged as a single system where the computer display is separate but is connected to the main chassis by a DC power cord and both the computer and computer display are powered from a single power supply. As a subset of desktop computers, integrated desktop computers are typically designed to provide similar functionality as desktop systems.

“Notebook computer” means a computer designed specifically for portability and to be operated for extended periods of time either with or without a direct connection to an AC power source. Notebooks must utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source. In addition, most notebooks use an external power supply and have an integrated keyboard and pointing device. Notebooks computers are typically designed to provide similar functionality to desktops, including operation of software similar in functionality to that used in desktops. Docking stations are considered accessories for notebook computers, not notebook computers. Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices, are considered notebook computers.

“Personal computer product” means a computer, computer display, desktop computer, integrated desktop computer, or notebook computer.

- (b) Under this contract, the Contractor shall deliver, furnish for Ames Laboratory use, or furnish for Contractor use at Ames Laboratory, only personal computer products that, at the time of submission of proposals and at the time of award, were EPEAT® bronze-registered or higher.
- (c) For information about EPEAT, see www.epa.gov/PEAT

22. ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (FAR 52.223-18 AUG 2011)

- (a) *Definitions.* As used in this clause –

“Driving” –

- (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

- (b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, dated October 1, 2009.
- (c) The contractor is encouraged to-
 - (1) Adopt and enforce policies that ban text messaging while driving-
 - (i) Company-owned or –rented vehicles or Government-owned vehicles; or
 - (ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
 - (2) Conduct initiatives in a manner commensurate with the size of the business, such as-
 - (i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - (ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

23. BUY AMERICAN ACT -- SUPPLIES (based on FAR 52.225-1 MAY 2014) (MODIFIED BY DEAR 970.2570)

- (a) *Definitions.* As used in this clause –

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

- (1) Means any item of supply (including construction material) that is –
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101;
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

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

“Cost of components” means -

- (1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means-

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if –
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined,

- produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
- (ii) The end product is a COTS item.
- “End product” means those articles, materials, and supplies to be acquired under the contract for public use.
“Foreign end product” means an end product other than a domestic end product.
“United States” means the 50 States, the District of Columbia, and outlying areas.
- (b) 41 U.S.C. Chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American Act is waived for an end product that is a COTS item. (See 12.505(a)(1)).
 - (c) Offerors may obtain from the Laboratory Procurement Official a list of foreign articles that the Laboratory Procurement Official will treat as domestic for this contract.
 - (d) The contractor shall use only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

24. DUTY FREE ENTRY (FAR 52.225-8 OCT 2010)

- (a) *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
 - (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—
 - (i) Foreign supplies;
 - (ii) Estimated amount of duty; and
 - (iii) Country of origin.
 - (2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.
 - (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—
 - (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
 - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
- (f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—
 - (1) Delivery address of the Contractor (or contracting agency, if appropriate);
 - (2) Government prime contract number;
 - (3) Identification of carrier;
 - (4) Notation “UNITED STATES GOVERNMENT, _____ [agency] _____, Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;
 - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
 - (6) Estimated value in United States dollars.
- (h) The Contractor shall instruct the foreign supplier to—
 - (1) Consign the shipment as specified in paragraph (g) of this clause;
 - (2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and
 - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

- (i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—
 - (1) Foreign supplies;
 - (2) Country of origin;
 - (3) Contract number; and
 - (4) Scheduled delivery date(s).
- (j) The Contractor shall include the substance of this clause in any subcontract if—
 - (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
 - (2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.

25. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FAR 52.225-13 JUNE 2008)

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at: <http://www.treas.gov/offices/enforcement/ofac/sdn/>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at: <http://www.treas.gov/offices/enforcement/ofac>.
- (d) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

26. CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (FAR 52.225-26 JUL 2013)

- (a) Definition.

"Private security functions" means activities engaged in by a Contractor, as follows:

 - (1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the Contractor or subcontractor, or a third party.
 - (2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.
- (b) Applicability. If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the designated area.
 - (1) For DoD contracts, designated areas are areas of –
 - (i) Contingency operations outside the United States;
 - (ii) Combat operations, as designated by the Secretary of Defense; or
 - (iii) Other significant military operations, as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.
 - (2) For non-DoD contracts, designated areas are areas of –
 - (i) Combat operations, as designated by the Secretary of Defense; or
 - (ii) Other significant military operations, as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.
- (c) Requirements. The Contractor is required to –
 - (1) Ensure that all employee of the Contractor who are responsible for performing private security functions under this contract comply with 32 CFR part 159, and with any orders, directives, and instructions to Contractors performing private security functions that are identified in the contract for –
 - (i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions;
 - (ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;
 - (iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operating by Contractors performing private security functions; and
 - (iv) Reporting incidents in which –
 - (A) A weapon is discharged by personnel performing private security functions;
 - (B) Personnel performing private security functions are attacked, killed, or injured;
 - (C) Persons are killed or injured or property is destroyed as a result of conduct by Contractor personnel;
 - (D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or
 - (E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;
 - (2) Ensure that the Contractor and all employees of the Contractor who are responsible for performing private security functions under this contract are briefed on and understand their obligation to comply with—
 - (i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by 32 CFR part 159, Private Security Contractors (PSCs) Operating in Contingency Operations, Combat

- Operations, or Other Significant Military Operations;
- (ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;
- (iii) Orders, directives, and instructions issued by the applicable commander of a combatant command or relevant Chief of Mission relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and
- (iv) Rules on the use of force issued by the applicable commander of a combatant command or relevant Chief of Mission for personnel performing private security functions; and
- (3) Cooperate with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing—
 - (i) Access to employees performing private security functions; and
 - (ii) Relevant information in the possession of the Contractor regarding the incident concerned.
- (d) Remedies. In addition to other remedies available to the Government —
 - (1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract.
 - (2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance; and
 - (3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.
- (e) Rule of construction. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.
- (f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that will be performed in areas of—
 - (1) DoD contracts only: Contingency operations, combat operations, as designated by the Secretary of Defense, or other significant military operations, as designated by the Secretary of Defense upon agreement of the Secretary of State; or
 - (2) Non-DoD contracts: Combat operations, as designated by the Secretary of Defense, or other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.

27. AUTHORIZATION AND CONSENT (based on FAR 52.227-1 DEC 2007)

- (a) The Government authorizes and consents to all use and manufacture, in performing this Contract or any subcontract at any tier, of any invention described in and covered by a United States patent—
 - (1) Embodied in the structure or composition of any article the delivery of which is accepted by the Laboratory or the Government under this Contract; or
 - (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with
 - (i) specifications or written provisions forming a part of this Contract or
 - (ii) specific written instructions given by the Laboratory or the Government directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.
- (b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the \$100,000, does not affect this authorization and consent.

28. COST ACCOUNTING STANDARDS (based on FAR 52.230-2, paragraphs a, c, d OCT 2015)

- (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—
 - (1) *(CAS-covered Contracts Only)* By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Laboratory Procurement Official that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Laboratory.
 - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.
 - (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
 - (4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is

- required to make to the Contractor's established cost accounting practices.
- (iv) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
 - (v) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Laboratory recover costs greater than the increased cost to the Laboratory, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Laboratory.
- (c) The Contractor shall permit any authorized representatives of the Laboratory to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
 - (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$750,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

29. ADMINISTRATION OF COST ACCOUNTING STANDARDS (FAR 52.230-6 JUNE 2010)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

- (a) Definition. As used in this clause-
 - “Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—
 - (1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or
 - (2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.
 - “Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.
 - “Desirable change” means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.
 - “Fixed-price contracts and subcontracts” means—
 - (1) Fixed-price contracts and subcontracts described at FAR [16.202](#), [16.203](#), (except when price adjustments are based on actual costs of labor or material, described at [16.203-1\(a\)\(2\)](#)), and [16.207](#);
 - (2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR [Subpart 16.4](#));
 - (3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR [Subpart 16.5](#)); and
 - (4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR [Subpart 16.6](#)).
 - “Flexibly-priced contracts and subcontracts” means—
 - (1) Fixed-price contracts and subcontracts described at FAR [16.203-1\(a\)\(2\)](#), [16.204](#), [16.205](#), and [16.206](#);
 - (2) Cost-reimbursement contracts and subcontracts (FAR [Subpart 16.3](#));
 - (3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR [Subpart 16.4](#));
 - (4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR [Subpart 16.5](#)); and
 - (5) The materials portion of time-and-materials contracts and subcontracts (FAR [Subpart 16.6](#)).
 - “Noncompliance” means a failure in estimating, accumulating, or reporting costs to—
 - (1) Comply with applicable CAS; or
 - (2) Consistently follow disclosed or established cost accounting practices.
 - “Required change” means—
 - (1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or
 - (2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

- (b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR [52.230-2](#), Cost Accounting Standards; paragraph (a)(4) of the clause at FAR [52.230-3](#), Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR [52.230-4](#), Disclosure and Consistency of Cost Accounting Practices–Foreign Concerns; or paragraph (a)(2) of the clause at FAR [52.230-5](#), Cost Accounting Standards–Educational Institution.
- (1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.
- (2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR [52.230-2](#); or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR [52.230-5](#); submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.
- (3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR [52.230-2](#) and FAR [52.230-5](#); or with paragraph (a)(3) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#), submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.
- (4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR [52.230-2](#) and FAR [52.230-5](#); or by paragraph (a)(4) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#))—
- (i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or
- (ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.
- (c) When requested by the CFAO, submit on or before a date specified by the CFAO—
- (1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;
- (2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;
- (3) For any request for a desirable change that is based on the criteria in FAR [30.603-2](#)(b)(3)(ii), the data necessary to demonstrate the required cost savings; and
- (4) For any request for a desirable change that is based on criteria other than that in FAR [30.603-2](#)(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.
- (d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—
- (1) Calculate the cost impact in accordance with paragraph (f) of this clause;
- (2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:
- (i) A representative sample of affected CAS-covered contracts and subcontracts.
- (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:
- (A) Fixed-price contracts and subcontracts.
- (B) Flexibly-priced contracts and subcontracts.
- (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;
- (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
- (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
- (A) Fixed-price contracts and subcontracts.
- (B) Flexibly-priced contracts and subcontracts.
- (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:
- (A) Fixed-price contracts and subcontracts.
- (B) Flexibly-priced contracts and subcontracts; and
- (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—
- (1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;
- (2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—
- (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

- (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;
- (3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and
- (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.
- (f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:
 - (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).
 - (2) For unilateral changes—
 - (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:
 - (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.
 - (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;
 - (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and
 - (iv) Calculate the increased cost to the Government in the aggregate.
 - (3) For equitable adjustments for required or desirable changes—
 - (i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and
 - (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.
- (g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:
 - (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
 - (2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:
 - (i) A representative sample of affected CAS-covered contracts and subcontracts.
 - (ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.
 - (iii) Any other method that provides a reasonable approximation of the total increase or decrease.
 - (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:
 - (i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (ii) The increased or decreased cost to the Government for each of the following groups:
 - (A) Fixed-price contracts and subcontracts.
 - (B) Flexibly-priced contracts and subcontracts.
 - (iii) The total overpayments and underpayments made by the Government during the period of noncompliance.
 - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:
 - (1) Calculate the cost impact in accordance with paragraph (i) of this clause.
 - (2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—
 - (i) Include only those affected CAS-covered contracts and subcontracts having—
 - (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and
 - (B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and
 - (ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.
 - (3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.
 - (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.
- (i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:
 - (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).
 - (2) For non-compliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:
 - (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.
 - (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

- (3) For non-compliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:
 - (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.
 - (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.
- (4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.
- (5) Calculate the increased cost to the Government in the aggregate.
- (j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:
 - (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.
 - (2) Issue a final decision in accordance with FAR [33.211](#) and unilaterally adjust the contract(s) by the estimated amount of the cost impact.
- (k) Agree to—
 - (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR [52.230-2](#) and [52.230-5](#); or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#); and
 - (2) Repay the Government for any aggregate increased cost paid to the Contractor.
- (l) For all subcontracts subject to the clauses at FAR [52.230-2](#), [52.230-3](#), [52.230-4](#), or [52.230-5](#)—
 - (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);
 - (2) Include the substance of this clause in all negotiated subcontracts; and
 - (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:
 - (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.
 - (iii) Name of Contractor making the award.
- (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—
 - (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and
 - (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.
- (n) For subcontracts containing the clause or substance of the clause at FAR [52.230-2](#), FAR [52.230-3](#), FAR [52.230-4](#), or FAR [52.230-5](#), require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

30. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEAR 970.5227-5 MODIFIED BY ISU JUN 2015)

- (a) The Contractor shall report to the Government through the Laboratory Procurement Official, promptly and in reasonable written detail, each notice or claim of patent, trademark or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) If the event of any claim or suit against the Government, the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, or the State of Iowa, on account of any alleged patent, trademark or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government or the Laboratory, when requested by the Government or the Laboratory, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government or Laboratory except where the Contractor has agreed to indemnify the Government or the Laboratory.
- (c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed \$150,000.

31. PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (based on FAR 52.232-40 DEC 2013)

- (a) Upon receipt of accelerated payments from the Laboratory, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a property invoice and all other required documentation from the small business subcontractor.
- (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
- (c) Include the substance of this clause, including this paragraph (c) in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

32. BANKRUPTCY (FAR 52.242-13 JUL 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Laboratory Procurement Official responsible for administering the contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Laboratory contract numbers against which final payment has not been made. This obligation remains in effect until final payment under this contract.

33. SUBCONTRACTS FOR COMMERCIAL ITEMS (based on FAR 52.244-6 DEC 2015)

- (a) Definitions. As used in this clause—
 “Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
 “Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3509), if the subcontract exceeds \$5,500,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer through the Laboratory Procurement Official.
 - (ii) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). Applies to subcontracts funded under the Recovery Act.
 - (iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
 - (v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
 - (vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));
 - (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
 - (viii) 52.222-37, Employment Reports on Veterans (Oct 2015) (38 U.S.C. 4212).
 - (ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
 - (x) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627 and Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
 - (xi) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015).
 - (xii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; (10 U.S.C. 2302 Note).
 - (xiii) 52.232-40, Providing Accelerated payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.
 - (xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

34. WARRANTY OF SERVICES (based on FAR 52.246-20 MAY 2001)

- (a) Definitions
 “Acceptance”, as used in this clause, means the act of an authorized representative of the Laboratory by which the Laboratory assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.
- (b) Notwithstanding inspection and acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in the workmanship and conform to the requirements of this contract. The Laboratory shall give written notice of any defect or nonconformance to the contractor. This notice shall state either—
 - (1) That the contractor shall correct or re-perform any defective or nonconforming services; or
 - (2) That the Laboratory does not require correction or re-performance.
- (c) If the contractor is required to correct or re-perform, it shall be at no cost to the Laboratory, and any services corrected or re-performed by the Laboratory shall be subject to this clause to the same extent as work initially performed. If the contractor fails or refuses to correct or re-perform, the Laboratory may, by contract or otherwise, correct or replace with similar services and charge to the contractor the cost occasioned to the Laboratory thereby, or make an equitable adjustment to the contract price
- (d) If the Laboratory does not require correction or re-performance, the Contracting Office shall make an equitable adjustment in the contract price.

35. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FAR 52.247-64 FEB 2006)

- (a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or

commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

- (1) Acquired for a U.S. Government agency account;
 - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
 - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 - (4) Acquired with advance of funds, loans, or guaranties 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 involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
- (i) The Contracting Officer, and
 - (ii) The:
Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590
- Subcontractor bills of lading shall be submitted through the Prime Contractor.
- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) Sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet if available.
 - (I) Total ocean freight revenue in U.S. dollars
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).
- (e) The requirements in paragraph (a) does not apply to—
- (1) Cargoes carried in vessels as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (4) Subcontracts or purchase orders for the acquisition of commercial items unless—
 - (i) This contract is—
 - (A) A contract of agreement for ocean transportation services; or
 - (B) A construction contract; or
 - (ii) The supplies being transported are—
 - (A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when if subcontracts items for f.o.b. destination shipment); or
 - (B) Shipped in direct support of U.S. military—
 - (1) Contingency operations
 - (2) Exercises; or
 - (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- (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
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610

36. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEAR 952.203-70 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 subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

37. DISPLACED EMPLOYEE HIRING PREFERENCE (DEAR 952.226-74 JUN 1997)

- (a) Definition. Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligible criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from

time to time, and (3) who is qualified for 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.

- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

38. ACCOUNTS, RECORDS, AND INSPECTION (DEAR 970.5232-3 a-h DEC 2010)

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, DEAR 970.5204-3 Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of DEAR clause 970.5204-3, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.
- (e) Reports. The Contractor shall furnish such progress reports and schedules, 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 agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview employees regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

39. CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (ISU JUN 2015)

- (a) *Inspection/Acceptance.* The contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Laboratory reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Laboratory may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Laboratory may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Laboratory must exercise its post acceptance rights—
 - (1) Within a reasonable time after the defect was discovered or should have been discovered; and
 - (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) *Changes.* No changes shall be made to any requirements of the Purchase Order without the prior written approval of the Laboratory or via a change Purchase Order. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- (c) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.
- (d) *Excusable delays.* The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Laboratory or the Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The contractor shall notify the Laboratory in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Laboratory of the cessation of such occurrence.
- (e) *Patent indemnity.* The contractor shall indemnify the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, and the State of Iowa and their officers, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the contractor is reasonably notified of such claims and proceedings.
- (f) *Payment.*—

- (1) *Items accepted.* Payment shall be made for items accepted by the Laboratory that have been delivered to the delivery destinations set forth in this contract.
- (2) *Prompt payment.* Upon the submission of proper invoices or vouchers, the Laboratory shall make payment at the prices stipulated in this contract by check, electronic funds, or as the parties may otherwise agree.
- (3) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date the invoice is received at the Laboratory. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (4) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Laboratory has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
 - (i) remit the overpayment amount to the Laboratory's payment office along with a description of the overpayment, including the (A) circumstances of the overpayment (e.g., duplicate payment, erroneous payment, date(s) of overpayment); (B) affected contract number and delivery order number, if applicable; (C) affected contract line item or subline item, if applicable; and contractor point of contact.
 - (ii) Provide a copy of the remittance and supporting documentation to the Laboratory Procurement Official.
- (g) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the contractor until, and shall pass to the Laboratory upon:
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Delivery of the supplies to the Laboratory at the destination specified in the contract, if transportation is f.o.b. destination.
- (h) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties. The Laboratory is exempt from federal excise taxes and state and local sales and use taxes, and Contractor shall not include such taxes in the contract price.
- (i) *Termination for the Laboratory's convenience.* The Laboratory reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the contractor can demonstrate to the satisfaction of the Laboratory using its standard record keeping system, have resulted from the termination. The contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (j) *Termination for cause.* The Laboratory may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the Laboratory, upon request, with adequate assurances of future performance. In the event of termination for cause, the Laboratory shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the Laboratory for any and all rights and remedies provided by law. If it is determined that the Laboratory improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (k) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Laboratory takes physical possession.
- (l) *Warranty.* The contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- (m) *Limitation of liability.* Except as otherwise provided by an express warranty, the contractor will not be liable to the Laboratory for consequential damages resulting from any defect or deficiencies in accepted items.
- (n) *Other compliances.* The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules, and regulations applicable to its performance under this contract.
- (o) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

40. QUALITY ASSURANCE (ISU APR 2016)

- (a) *Assessment.* The Contractor's quality system is subject to assessment by the Laboratory for conformance with the requirements of this purchase. Any supplier or distributor shall allow Laboratory representatives and regulatory agencies right of entry into the supplier or distributor facilities to determine and verify product, processes, records, personnel, material, procedures, and systems.
- (b) *Responsibility for subcontractors.* It is the responsibility of the Contractor to impose applicable quality assurance requirements upon its subcontractors. The Laboratory reserves the right to disapprove, in writing, any subcontractor.
- (c) *Responsibility for conformance.* The Contractor is responsible to provide items that conform to the requirements of the Purchase Order regardless of any assessments, surveillances, inspections and/or tests by the Laboratory at either the Contractor's or Laboratory's facility. The Laboratory reserves the right to request failure analysis and corrective action for non-conforming articles or items submitted or supplied to the Laboratory. The Contractor is responsible for notifying the Buyer of any recalls or alerts associated with this Purchase.
- (d) *Packaging.* The Contractor shall employ procedures that assure adequate protection of material and equipment during shipment and while in storage. Such protection should include special environmental packaging, as necessary. All items shipped to the Laboratory (or as designated shipping destination) in the Purchase Order, should comply with the requirements for preservation, packaging and marking as stated in the latest revision of ASTM Standard D 3951 Standard Practice for Commercial Packaging. Packages with a gross weight equal to or greater than 400 pounds (180 kilograms) should be marked with the center of gravity location and gross weight on at least one side, or end panel.
- (e) *Chemicals.* The Contractor shall delivery any chemical purchases in full compliance with the Department of Labor, Occupational Safety & Health Administration (OSHA)'s Globally Harmonized System (GHS) Hazard Communication Standard (29 CFR 1910.1200), available at: <http://www.osha.gov/dsg/hazcom/HCSFinalRegTxt.html>. A GHS Safety Data Sheet (SDS) shall be available for all hazardous chemicals delivered to the Laboratory with the format and content specified in 29 CFR 1910.1200. All hazardous chemicals shall have a label with the elements specified in 29 CFR 1910.1200 [product identifier; pictograms; signal words; hazard statement(s); precautionary statement(s); and manufacturer, importer, or distributor's name, address, and telephone number].

41. DISPUTES (ISU JUN 2015)

- (a) Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty calendar days. After sixty calendar days, if possibilities for negotiations have failed, a party may provide written notice to the other party requesting that the dispute be submitted to Alternative Dispute Resolution (ADR). If neither party makes such a request or if the other party does not agree to the request within ten calendar days or if the parties are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
- (b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction in the State of Iowa.
- (c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR) that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Iowa shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- (d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.
- (e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit the Laboratory, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that the Laboratory so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as the Laboratory.

42. CONDUCT OF EMPLOYEES (ISU OCT 2014)

The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The contractor shall immediately remove from the work any employee of the contractor who, in the sole discretion of the Laboratory, is found to be unsatisfactory in technical performance or personal conduct.

43. WARRANTY OF SUPPLIES (ISU APR 2009)

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

Energy Consuming Products

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

<http://www.energystar.gov/products> and FEMP at http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm.

Environmentally Preferable Purchasing for Desktop or Laptop Computers or Monitors

When the contract requires the specification or delivery of desktop or laptop computers or monitors in a DOE facility, the contractor will specify or deliver Electronic Product Environmental Acquisition Tool (EPEAT) registered products conforming to the IEEE 1680-2006 Standard, provided such products are available, are life cycle cost efficient, and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

Compliance with Internet Protocol Version 6 (IPv6) in Acquiring Information Technology

If this contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology, the contractor agrees that: (1) all deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products, and; (2) it has IPv6 technical support for development and implementation and fielded product management available.

If the contractor plans to offer a deliverable that involves IT that is not initially compliant, the contractor agrees to: (1) obtain the Laboratory Procurement Official approval before starting work on the deliverable; (2) provide a migration path and firm commitment to upgrade to IPv6 for all application and product features and; (3) have IPv6 technical support for development and implementation and fielded product management available. Should the contractor find that the statement of work or specifications of this contract do not conform to the IPv6 standard, it must notify the Laboratory Procurement Official of such nonconformance and act in accordance with instructions of the Laboratory Procurement Official.

44. LABORATORY SITE ACCESS AND/OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (ISU OCT 2014)

Site access, including cyber access utilizing a Laboratory account, by all non-US. Citizens must be reviewed and approved by the Laboratory Director or his designee. All new requests must be submitted on Form AL-473. Non-U.S. citizens are categorized as either visitors (on site for 30 days or less) or assignees (on site for more than 30 days in a 12-month period). A certified host must be assigned for each visit or assignment. Form AL-473 should be submitted as far in advance as possible.

For visits and assignments involving a foreign national from a "Sensitive Country" and access to a sensitive subject, Security, Counterintelligence, and Export Control reviews will need to occur. In such cases, a specific security plan is required to be submitted to the Foreign Visits and Assignments Office with the AL-473 form requesting the visit by the Hosting Division.

For visits or assignments involving a foreign national from a "Terrorist Supporting Country", (which currently includes: Cuba, Iran, North Korea, Sudan, Syria), specific approval of the visit/assignment by the Secretary of Energy or his designees is required. This approval, if granted, may take up to one year after the internal approvals have been processed.

The time frames indicated above shall not constitute the basis for any equitable adjustment or claim to the contract price or performance/delivery period. For assistance in preparing a request, contact the Ames Laboratory Requestor associated with your activity.

45. EXPORT CONTROLS (ISU OCT 2014)

The contractor understands that the materials and/or information being transmitted under the performance of this contract may be subject to U.S. Government laws and regulations regarding export or re-export. This includes deemed exports which are any communication of technical data to a foreign national, whether it takes place in the United States or abroad. Technical information (data) provided to a foreign national verbally, by mail, by telephone or facsimile, through visits or workshops, or through computer networking is an export. If a foreign national observes equipment or a process, it may constitute an export of technical data. It is solely the contractor's obligation to obtain all appropriate export licenses, keep required records, and comply fully with all export control statutes and regulations. Unless authorized by appropriate government license or regulation, contractor agrees not to export directly or indirectly any technology, software or materials provided by the Laboratory. The Contractor shall give the Laboratory 15 days advance written notice of its intention to deliver to the Laboratory any information, data, software, technology, or material that is export controlled and the Laboratory shall have the right to refuse receipt of the same. Contractor shall be solely liable for any violation of export control statutes or regulations, and shall indemnify, defend and hold the Department of Energy, Iowa State University, the Board of Regents – State of Iowa, the State of Iowa, and the Laboratory harmless from any liability that may arise for any such violation.

46. LIMITATIONS PERIOD (ISU OCT 2014)

Any action brought by the contractor for breach of contract, request for equitable adjustment, or any other claim arising under the contract must be identified in writing to the Laboratory Subcontract administrator. Such written notification must be received by the Laboratory Subcontract administrator within two (2) years (unless an earlier period is specified under law or stated elsewhere in the contract) after the completion of work under the contract or after the cause of action has arisen, whichever occurs first, otherwise the contractor shall be barred from pursuing such action.

47. INDEMNIFICATION (ISU OCT 2014)

Except as otherwise provided, the Contractor shall indemnify, defend and hold harmless the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, the State of Iowa, the Government and their officers, agents, and employees against all liability, including costs and expenses, related to or arising from the Contractor's performance of its obligations under this Agreement or the acts or omissions of the Contractor, its officers, directors, employees, and subcontractors.

48. ASSIGNMENT (ISU OCT 2014)

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

49. APPLICABLE LAW (ISU OCT 2014)

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

50. INTEGRATION CLAUSE (ISU OCT 2014)

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. Any discrepancy, inconsistency, or conflict between one or more of the documents comprising this contract 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.

51. NON-WAIVER OF DEFAULTS (ISU OCT 2014)

Any failure by the Laboratory at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this contract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, nor the right of the Laboratory at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

52. USE OF NAME (ISU OCT 2014)

Contractor shall not use the name or trademarks of Ames Laboratory, Iowa State University, the Government or the name of any of their employees in a publicity of advertising, including endorsements, without the prior written consent of such entities or persons.

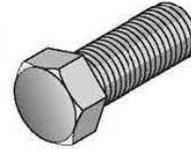
53. SUSPECT COUNTERFEIT PARTS (based on DOE O 414.1D Chg 1, MAY 2013)

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 Ames Laboratory include all genuine, original, and new components, or are otherwise suitable for the intended purpose. The Contractor shall verify the procurement source and associated certifying paperwork. Distributors shall not modify, rework or repair material shipped on this order. Furthermore, the contractor shall indemnify the Laboratory, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

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

The Contractor should flow this requirement down to all subcontractors to prevent inadvertent use of counterfeit parts and materials. For more information, refer to the DOE Website: http://www.hss.energy.gov/sesa/corporate_safety/sci. (see next page)

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:



Grade 5



Grade 8

Grade 5 fasteners with the following manufacturers' headmarks:



MARK MANUFACTURER
J Jinn Her (TW*)



MARK MANUFACTURER
KS Kosaka Kogyo (JP)

Grade 8 fasteners with the following manufacturers' headmarks:



MARK MANUFACTURER
A Asahi Mfg. (JP)



MARK MANUFACTURER
KS Kosaka Kogyo (JP)



NF Nippon Fasteners (JP)



RT Takai Ltd. (JP)



H Hinomoto Metal (JP)



FM Fastener Co. of Japan (JP)



M Minamida Sieybo (JP)



KY Kyoei Mfg. (JP)



MS Minato Kogyo (JP)



J Jinn Her (TW)



Hollow Triangle Infasco (CA, TW, JP, and YU)
(Greater than 1/2-inch diameter)



UNY Unytite (JP)



E Daiei (JP)

Grade 8.2 fastener with the following headmark:



MARK MANUFACTURER
KS Kosaka Kogyo (JP)

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



Type 1



Type 2



Type 3

MARK MANUFACTURER
A325 KS Kosaka Kogyo (JP)

Headmarkings are usually raised – sometimes indented.

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