



AMES LABORATORY TERMS AND CONDITIONS (For Fixed-Price Construction Contracts, November 2015)

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 For those clauses which may have been superseded, the most recent version is incorporated despite the date of the clause listed.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.

Clause

1.	ACCEPTANCE (ISU APR 2009)	1
2.	COVENANT AGAINST CONTINGENT FEES (based on FAR 52.203-5 MAY 2014)	1
3.	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (FAR 52.203-6 SEPT 2006).....	1
4.	ANTI-KICKBACK PROCEDURES (FAR 52.203-7 MAY 2014).....	1
5.	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (FAR 52.203-12 OCT 2010) ..	2
6.	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (based on FAR 52.204-9, a, d JAN 2011).....	5
7.	PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS WITH DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (based on FAR 52.209-6 OCT 2015)	5
8.	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (based on FAR 52.215-10 AUG 2011)...	6
9.	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (based on FAR 52.215-11 AUG 2011)	7
10.	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (FAR 52.215-12 OCT 2010).....	8
11.	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (FAR 52.215-13 OCT 2010).....	9
12.	UTILIZATION OF SMALL BUSINESS CONCERNS (FAR 52.219-8 OCT 2014).....	9
13.	SMALL BUSINESS SUBCONTRACTING PLAN (based on FAR 52.219-9 OCT 2015).....	10
14.	NOTICE TO THE LABORATORY OF LABOR DISPUTES (based on FAR 52.222-1 FEB 1997).....	15
15.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (based on FAR 52.222-4 MAY 2014)	16
16.	CONSTRUCTION WAGE RATE REQUIREMENTS (based on FAR 52.222-6 MAY 2014).....	16
17.	WITHHOLDING OF FUNDS (based on FAR 52.222-7 MAY 2014).....	18
18.	PAYROLLS AND BASIC RECORDS (based on FAR 52.222-8 MAY 2014)	18
19.	APPRENTICES AND TRAINEES (FAR 52.222-9 JULY 2005).....	19
20.	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FAR 52.222-10 FEB 1988)	20
21.	SUBCONTRACTS (LABOR STANDARDS) (based on FAR 52.222-11 MAY 2014)	20
22.	CONTRACT TERMINATION - DEBARMENT (FAR 52.222-12 MAY 2014)	21
23.	COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (FAR 52.222-13 MAY 2014)	21
24.	DISPUTES CONCERNING LABOR STANDARDS (based on FAR 52.222-14 FEB 1988)	21
25.	CERTIFICATION OF ELIGIBILITY (FAR 52.222-15 MAY 2014).....	22
26.	PROHIBITION OF SEGREGATED FACILITIES (FAR 52.222-21 APR 2015)	22
27.	EQUAL OPPORTUNITY (FAR 52.222-26 APR 2015).....	22
28.	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FAR 52.222-27 APR 2015)	23
29.	CONSTRUCTION WAGE RATE REQUIREMENTS – PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (FAR 52.222-30 MAY 2014).....	26
30.	PROJECT LABOR AGREEMENT (FAR 52.222-34 MAY 2010).....	27



31.	EQUAL OPPORTUNITY FOR VETERANS (FAR 52.222-35 OCT 2015)	27
32.	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (FAR 52.222-36 JULY 2014)	27
33.	EMPLOYMENT REPORTS ON VETERANS (FAR 52.222-37 OCT 2015)	27
34.	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (FAR 52.222-40 DEC 2010)	28
35.	COMBATING TRAFFICKING IN PERSONS (based on FAR 52.222-50 MAR 2015)	29
36.	EMPLOYMENT ELIGIBILITY VERIFICATION (FAR 52.222-54 OCT 2015)	33
37.	ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (based on FAR 52.223-13 JUNE 2014)	34
38.	ACQUISITION OF EPEAT®- REGISTERED TELEVISIONS (based on FAR 52.223-14 JUNE 2014)	35
39.	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (based on FAR 52.223-15 DEC 2007)	35
40.	ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (based on FAR 52.223-16 OCT 2015)	36
41.	AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (FAR 52.223-17 MAY 2008)	36
42.	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (FAR 52.223-18 AUG 2011)	37
43.	BUY AMERICAN ACT--CONSTRUCTION MATERIALS (based on FAR 52.225-9 MAY 2014)	37
44.	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FAR 52.225-13 JUNE 2008)	39
45.	AUTHORIZATION AND CONSENT (FAR 52.227-1 DEC 2007)	39
46.	PATENT INDEMNITY-CONSTRUCTION CONTRACTS (based on FAR 52.227-4 DEC 2007)	40
47.	RIGHTS TO PROPOSAL DATA (TECHNICAL) (FAR 52.227-23 JUNE 1987)	40
48.	COST ACCOUNTING STANDARDS (based on FAR 52.230-2, paragraphs a, c, d OCT 2015)	40
49.	ADMINISTRATION OF COST ACCOUNTING STANDARDS (FAR 52.230-6 JUN 2010)	41
50.	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (based on FAR 52.232-40 DEC 2013)	46
51.	SUPERINTENDENCE BY THE CONTRACTOR (based on FAR 52.236-6 APR 1984)	47
52.	PERMITS AND RESPONSIBILITIES (based on FAR 52.236-7 NOV 1991)	47
53.	SCHEDULES FOR CONSTRUCTION CONTRACTS (based on FAR 52.236-15 APR 1984)	47
54.	BANKRUPTCY (based on FAR 52.242-13 JUL 1995)	47
55.	SUSPENSION OF WORK (based on FAR 52.242-14 APR 1984)	47
56.	SUBCONTRACTS FOR COMMERCIAL ITEMS (based on FAR 52.244-6 OCT 2015)	48
57.	INSPECTION OF CONSTRUCTION (based on FAR 52.246-12 AUG 1996)	49
58.	WARRANTY OF CONSTRUCTION (based on FAR 52.246-21 MAR 1994)	50
59.	TERMINATION FOR CONVENIENCE OF THE LABORATORY (FIXED PRICE) (based on FAR 52.249-2 APR 2012, ALTERNATE III SEPT 1996)	50
60.	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEAR 952.203-70 DEC 2000)	52
61.	SUSTAINABLE ACQUISITION PROGRAM (based on DEAR 952.223-78 OCT 2010 ALT I)	52
62.	DISPLACED EMPLOYEE HIRING PREFERENCE (DEAR 952.226-74 JUN 1997)	54
63.	ACCOUNTS, RECORDS, AND INSPECTION (based on DEAR 970.5232-3 a-h DEC 2010)	54
64.	LAWS, REGULATIONS, AND DOE DIRECTIVES (based on DEAR 970.5204-2 DEC 2000)	55
65.	NOTICE AND ASSISTANCE REGARDING PATENT AND COPY RIGHT INFRINGEMENT (based on DEAR 970.5227-5 AUG 2002)	55
66.	BONDS AND INSURANCE (based on DEAR 970.5244-1 JAN 2013)	55
67.	DEFAULT (FIXED PRICE CONSTRUCTION) (ISU OCT 2014, based on FAR 52.249-10 (APR 1984))	57
68.	STATE AND LOCAL TAXES (ISU OCT 2014, based on DEAR 970.5229-1(DEC 2000))	58
69.	CONDUCT OF EMPLOYEES (ISU OCT 2014)	58
70.	PAYMENTS (ISU OCT 2014)	58
71.	LABORATORY SITE ACCESS AND/OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (ISU OCT 2014)	59
72.	EXPORT CONTROLS (ISU OCT 2014)	60
73.	REPORTS (ISU OCT 2014)	60
74.	ENVIRONMENTAL PROTECTION (ISU OCT 2014)	60
75.	ENVIRONMENT, SAFETY AND HEALTH (ISU OCT 2014)	60
76.	LIMITATIONS PERIOD (ISU OCT 2014)	68
77.	INDEMNIFICATION (ISU OCT 2014)	68



78. ASSIGNMENT AND SUBCONTRACTING (ISU OCT 2014)..... 68

79. APPLICABLE LAW (ISU OCT 2014)..... 68

80. INTEGRATION CLAUSE (ISU OCT 2014)..... 68

81. NON-WAIVER OF DEFAULTS (ISU OCT 2014)..... 69

82. USE OF NAME (ISU OCT 2014)..... 69

83. SUSPECT COUNTERFEIT PARTS (DOE G 414.1-2B Chg 2 MAY 2013) 69

APPENDIX A - NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

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 or Subcontract (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. COVENANT AGAINST CONTINGENT FEES (based on FAR 52.203-5 MAY 2014)

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

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

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

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

3. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (FAR 52.203-6 SEPT 2006)

(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.

(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.

4. 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) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), 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.

5. 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 contractor 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.

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

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract 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 and/or routine access to a Federally-controlled information system.

7. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS WITH 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.

8. PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (based on FAR 52.215-10 AUG 2011)

- (a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—
 - (1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
 - (2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 - (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
- (b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
 - (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (c) (1) If the Laboratory Subcontract Administrator determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Laboratory Subcontract Administrator should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Laboratory Subcontract Administrator.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.



- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Laboratory Procurement Official based upon the facts shall be allowed against the amount of a contract price reduction if—
 - (A) The Contractor certifies to the Laboratory Subcontract Administrator that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
 - (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Laboratory proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Laboratory is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

In the event that any agency of the Federal Government determines that the Laboratory was reimbursed for costs that were unallowable due to the fact that they were based upon contractor's or subcontractor's defective cost or pricing data, then the contractor or subcontractor shall indemnify and hold harmless the Laboratory for the amount of such disallowed costs, and immediately reimburse the Laboratory.

9. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (based on FAR 52.215-11 AUG 2011)

- (a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403-4(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.403-1(b) applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract; or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Laboratory Subcontract Administrator determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:



- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
- (ii) The Laboratory Subcontract Administrator should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Laboratory Subcontract Administrator.
- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Laboratory Subcontract Administrator based upon the facts shall be allowed against the amount of a contract price reduction if—
 - (A) The Contractor certifies to the Laboratory Subcontract Administrator that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
 - (A) The understated data were known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The Laboratory proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the Laboratory at the time such overpayment is repaid—
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Laboratory is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

In the event that any agency of the Federal Government determines that the Laboratory was reimbursed for costs that were unallowable due to the fact that they were based upon contractor's or subcontractor's defective cost or pricing data, then the contractor or subcontractor shall indemnify and hold harmless the Laboratory for the amount of such disallowed costs, and immediately reimburse the Laboratory.

10. SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (FAR 52.215-12 OCT 2010)

- (a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
- (b) The contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the contractor shall insert either –
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or



- (3) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data -- Modifications.

11. SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (FAR 52.215-13 OCT 2010)

- (a) The requirements of paragraphs (b) and (c) of this clause shall –
- (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4; and
- (2) Be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission for certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
- (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontractor or subcontract modification.
- (d) The Contractor shall insert the substance of this clause including paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price of the date of award, whichever is later.

12. 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.
- (d) (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.

13. SMALL BUSINESS SUBCONTRACTING PLAN (based on FAR 52.219-9 OCT 2015)

- (a) This clause does not apply to small business concerns.
- (b) Definitions. As used in this clause—
- “Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).
- “Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.
- “Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
- “Electronic Subcontracting Reporting System (eSRS)” means the Government wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.
- “Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).
- “Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.



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

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

- (c) The offeror, upon request by the Laboratory Subcontract Administrator, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Laboratory Subcontract Administrator. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.
- (d) The offeror’s subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:
 - (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
 - (ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
 - (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
 - (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
 - (C) The ANC or Indian tribe shall give a copy of the written designation to the Government, the Laboratory, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
 - (D) If the Government does not receive a copy of the ANC’s or the Indian tribe’s written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.
 - (2) A statement of –
 - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror’s total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian Tribes);
 - (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
 - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
 - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to –



- (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns, and
 - (vi) Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with –
 - (i) Small business concerns (including ANC and Indian Tribes);
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
 - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a plan similar to the plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will –
 - (i) Cooperate in any studies or surveys as may be required;
 - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
 - (iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that are not small businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
 - (iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;



- (v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Laboratory official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and
 - (vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating –
 - (A) Whether small business concerns were solicited and if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and if not, why not;
 - (F) Whether women-owned small business concerns were solicited and if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
 - (iv) Records of any outreach efforts to contact –
 - (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
 - (v) Records of internal guidance and encouragement provided to buyers through –
 - (A) Workshops, seminars, training, etc., and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
 - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.



- (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the System for Award Management (SAM) database or by contacting SBA.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
 - (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided –
- (1) The master plan has been approved;
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Laboratory Procurement Official; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Laboratory Procurement Official to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, neither the Government nor the Laboratory will require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Government or Laboratory Subcontract Administrator who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Laboratory Subcontract Administrator in determining the responsibility of the offeror for award of the contract.
- (i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.
- (j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.
- (k) The failure of the Contractor or subcontractor to comply in good faith with –
- (1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.



- (1) **ISR.** This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Laboratory Subcontract Administrator, if no ACO is assigned.
 - (i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Laboratory Subcontract Administrator. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.
 - (ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.
 - (iii) The authority to acknowledge receipt or reject the ISR resides—
 - (A) In the case of the prime Contractor, with the Laboratory Subcontract Administrator; and
 - (B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.
- (2) **SSR.**
 - (i) Reports submitted under individual contract plans—
 - (A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.
 - (B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.
 - (C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1,500,000 for construction of a public facility) and contains a subcontracting plan.
 - (D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.
 - (E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.
 - (F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.
 - (ii) Reports submitted under a commercial plan—
 - (A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.
 - (B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.
 - (C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.
 - (D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

14. NOTICE TO THE LABORATORY OF LABOR DISPUTES (based on FAR 52.222-1 FEB 1997)

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



15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (based on FAR 52.222-4 MAY 2014)

- (a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government or the Laboratory. The Laboratory Procurement Official will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards statute (found at 40 U.S.C. chapter 37).
- (c) Withholding for unpaid wages and liquidated damages. The Laboratory Procurement Official will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Laboratory Procurement Official will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute.
- (d) Payrolls and basic records.
 - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Laboratory until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements Statute..
 - (2) The Contractor and its subcontractors shall allow authorized representatives of the Laboratory or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Laboratory or Department of Labor to interview employees in the workplace during working hours.
- (e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

16. CONSTRUCTION WAGE RATE REQUIREMENTS (based on FAR 52.222-6 MAY 2014)

- (a) Definition.—“Site of the work”—
 - (1) Means—
 - (i) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and
 - (ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is (A) located in the United States; and (B) established specifically for the performance of the contract or project;
 - (2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—



- (i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and
- (ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;
- (3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.
- (b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work; regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.
- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.
- (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.
- (c) (1) The Laboratory shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Laboratory agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a conformance request shall be sent by the Laboratory Subcontract Administrator to the Contracting Officer for approval. The Contracting Officer will approve,



- modify, or disapprove every additional classification action within 30 days of receipt and so advise the Laboratory or will notify the Laboratory within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Laboratory do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Laboratory shall refer the questions, including the views of all interested parties and the recommendation of the Laboratory, to the Contracting Officer for determination. The Contracting Officer, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Laboratory or will notify the Laboratory within the 30-day period that additional time is necessary.
 - (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
 - (d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (e) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

17. WITHHOLDING OF FUNDS (based on FAR 52.222-7 MAY 2014)

The Laboratory shall, upon its own action or upon written request of an authorized representative of the Department of Energy or the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Laboratory may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

18. PAYROLLS AND BASIC RECORDS (based on FAR 52.222-8 MAY 2014)

- (a) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b)(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Laboratory via www.lcptracker.net unless otherwise directed by the Laboratory. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The Prime Contractor is responsible for the submission of copies of payrolls



by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Laboratory, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Laboratory.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify--
 - (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (4) The falsification of any of the certifications in this clause may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under (a) of this clause available for inspection, copying, or transcription by the Laboratory or authorized representatives of the Laboratory or the Department of Labor. The contractor or subcontractor shall permit the Laboratory or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the contractor or subcontractor fails to submit required records or to make them available, the Laboratory may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

19. APPRENTICES AND TRAINEES (FAR 52.222-9 JULY 2005)

- (a) Apprentices.
 - (1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when employed—
 - (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
 - (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
 - (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program.
 - (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
 - (4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.



- (5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
 - (6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) Trainees.
- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.
 - (2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.
 - (3) In the event OATELS withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

20. COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FAR 52.222-10 FEB 1988)

The contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

21. SUBCONTRACTS (LABOR STANDARDS) (based on FAR 52.222-11 MAY 2014)

- (a) Definition. "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
 - (2) Painting and decorating;
 - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
 - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and



- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).
- (b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
 - (1) Construction Wage Rate Requirements;
 - (2) Contract Work Hours and Safety Standards Act — Overtime Compensation (if the clause is included in this contract);
 - (3) Apprentices and Trainees;
 - (4) Payrolls and Basic Records;
 - (5) Compliance with Copeland Act Requirements;
 - (6) Withholding of Funds;
 - (7) Subcontracts (Labor Standards);
 - (8) Contract Termination – Debarment;
 - (9) Disputes Concerning Labor Standards;
 - (10) Compliance with Construction Wage Rate Requirements and Related Act Regulations; and
 - (11) Certification of Eligibility.
- (c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d)
 - (1) Within 14 days after award of the contract, the Contractor shall deliver to the Laboratory Subcontract Administrator a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
 - (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Laboratory Subcontract Administrator an updated completed SF 1413 for such additional subcontract.
- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

22. CONTRACT TERMINATION - DEBARMENT (FAR 52.222-12 MAY 2014)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

23. COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (FAR 52.222-13 MAY 2014)

All rulings and interpretations of the Construction Wage Rate Requirements and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

24. DISPUTES CONCERNING LABOR STANDARDS (based on FAR 52.222-14 FEB 1988)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures. Disputes within the

meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

25. CERTIFICATION OF ELIGIBILITY (FAR 52.222-15 MAY 2014)

- (a) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b)(2) or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

26. 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," as used in this clause, 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, 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.

27. EQUAL OPPORTUNITY (FAR 52.222-26 APR 2015)

- (a) Definition. As used in this clause.
"Gender identity" has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.
"United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) (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.
(2) 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, 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.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

28. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FAR 52.222-27 APR 2015)

- (a) Definitions
"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.



“Deputy Assistant Secretary,” as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

“Employer identification number,” as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, as is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

“Minority,” as used in this clause, means --

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
- (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (3) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); and
- (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, as is found at www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.

- (b) If the contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
- (c) If the contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other contractors or subcontractor toward a goal in an approved plan does not excuse any contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the contractor has a collective bargaining agreement, to refer minorities or women shall excuse the contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
 - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the contractor's employees are assigned to work. The contractor, if possible, will assign two or more women to each construction project. The contractor shall ensure the foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.



- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the contractor by the union or, if referred back, not employed by the contractor, this shall be documented in the file, along with whatever additional actions the contractor may have taken.
- (4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the contractor has a collective bargaining agreement has not referred back to the contractor a minority or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.
- (6) Disseminate the contractor's equal employment policy by --
 - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the contractor in meeting its contract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;
 - (iii) Publicizing the policy in the company newspaper, annual report, etc.;
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other contractors and subcontractors with which the contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.



- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment policy and affirmative action obligations.
- (h) The contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the contractor --
 - (1) Actively participates in the group.
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the contractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women shall be established. The contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (j) The contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (k) The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
- (m) The contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.
- (n) The contractor shall designate a responsible official to --
 - (1) Monitor all employment related activity to ensure that the contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the Laboratory or the Government; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

29. CONSTRUCTION WAGE RATE REQUIREMENTS – PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (FAR 52.222-30 MAY 2014)



- (a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.
- (b) The Laboratory will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of –
 - (1) Incorporation of the Department of Labor’s wage determination applicable at the exercise of the option to extend the term of the contract;
 - (2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
 - (3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Construction Wage Rate Requirements statute.

30. PROJECT LABOR AGREEMENT (FAR 52.222-34 MAY 2010)

- (a) Definitions. As used in this clause –
 - “Labor organization” means a labor organization as defined in 29 USC 152(5).
 - “Project Labor Agreement” means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 USC 158(f).
- (b) The Contractor shall maintain in a current status throughout the life of the contract the project labor agreement entered into prior to the award of this contract in accordance with solicitation provision 52.222-33, Notice of Requirement for Project Labor Agreement.
- (c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts with subcontractors engaged in construction on the construction project.

31. 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.

32. EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (FAR 52.222-36 JULY 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.

33. EMPLOYMENT REPORTS ON 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, 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 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.

34. 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.

35. 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; (4) loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined contractor non-compliance; (5) termination of the contract for default or cause, in accordance with the termination clause of this contract; or (6) 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.

36. 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.

37. 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.

38. 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.

39. 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 products or is 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, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. 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.

40. 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. Notebook 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/epeat

41. AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (FAR 52.223-17 MAY 2008)



- (a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-
 - (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (2) Meeting contract performance requirements; or
 - (3) At a reasonable price.
- (b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines Web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/epg/products.htm>.

42. 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.

43. BUY AMERICAN ACT--CONSTRUCTION MATERIALS (based on FAR 52.225-9 MAY 2014)

- (a) Definitions. As used in this clause—
 - “Commercially available off-the-shelf (COTS) item”—
 - (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - (2) Does not include bulk cargo, as defined in (46 U.S.C. 40102(4)), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material



regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (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 construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material 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 for which nonavailability determinations have been made are treated as domestic; or
 - (ii) the construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

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

(b) Domestic preference.

- (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American Act is waived for construction material that is a COTS item (see FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
- (2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: *None*
- (3) Ames Laboratory may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).



- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Ames Laboratory and the Contractor negotiate adequate consideration, Ames Laboratory will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:
 Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.]

[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

44. 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/>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

45. AUTHORIZATION AND CONSENT (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 simplified acquisition threshold, does not affect this authorization and consent.

46. PATENT INDEMNITY-CONSTRUCTION CONTRACTS (based on FAR 52.227-4 DEC 2007)

Except as otherwise provided, the Contractor shall indemnify the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, the State of Iowa, and the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under [35 U.S.C. 181](#)) arising out of performing this contract or out of the use or disposal by or for the account of the Government or the Laboratory of supplies furnished or work performed under this contract.

47. RIGHTS TO PROPOSAL DATA (TECHNICAL) (FAR 52.227-23 JUNE 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in FAR 52.227-14 “Rights in Data—General” clause) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

48. 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.
 - (ii) 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.
- (iii) 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.

49. ADMINISTRATION OF COST ACCOUNTING STANDARDS (FAR 52.230-6 JUN 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) Definitions. 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 noncompliances 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 noncompliances 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.

50. 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.

51. SUPERINTENDENCE BY THE CONTRACTOR (based on FAR 52.236-6 APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Laboratory and has authority to act for the contractor.

52. PERMITS AND RESPONSIBILITIES (based on FAR 52.236-7 NOV 1991)

The contractor shall, without additional expense to the Laboratory, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The contractor shall also be responsible for all damages to persons or property that occur as a result of the contractor's fault or negligence. The contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

53. SCHEDULES FOR CONSTRUCTION CONTRACTS (based on FAR 52.236-15 APR 1984)

- (a) The contractor shall, within five days after the work commences on the contract or another period of time determined by the Laboratory, prepare and submit to the Laboratory for approval three copies of a practicable schedule showing the order in which the contractor proposes to perform the work, and the dates on which the contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the contractor fails to submit a schedule within the time prescribed, the Laboratory may withhold approval of progress payments until the contractor submits the required schedule.
- (b) The contractor shall enter the actual progress on the chart as directed by the Laboratory, and upon doing so shall immediately deliver three copies of the annotated schedule to the Laboratory. If, in the opinion of the Laboratory, the contractor falls behind the approved schedule, the contractor shall take steps necessary to improve its progress, including those that may be required by the Laboratory, without additional cost to the Laboratory. In this circumstance, the Laboratory may require the contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules, in chart form as the Laboratory deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the contractor to comply with the requirements of the Laboratory under this clause shall be grounds for a determination by the Laboratory that the contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Laboratory may terminate the contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

54. BANKRUPTCY (based on 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.

55. SUSPENSION OF WORK (based on FAR 52.242-14 APR 1984)



- (a) The Laboratory may order the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Laboratory determines appropriate for the convenience of the Laboratory.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Laboratory in the administration of this contract, or (2) by the Laboratory's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the contractor shall have notified the Laboratory in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

56. SUBCONTRACTS FOR COMMERCIAL ITEMS (based on FAR 52.244-6 OCT 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 DOE agency Office of the Inspector General, with a copy to the Contracting Officer.
 - (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
 - (iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (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 (July 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) (A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. 78 and E.O. 13627). (B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O 13627).



- (xi) 52.222-55, Establishing a Minimum Wage for Contractors (E.O. 13658) (Dec 2014).
 - (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.

57. INSPECTION OF CONSTRUCTION (based on FAR 52.246-12 AUG 1996)

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The contractor shall maintain complete inspection records and make them available to the Laboratory and the Government. All work shall be conducted under the general direction of the Laboratory and is subject to Laboratory and Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) Laboratory and Government inspections and tests are for the sole benefit of the Laboratory and the Government and do not--
 - (1) Relieve the contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of the Laboratory after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a Laboratory or Government inspector does not relieve the contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Laboratory's written authorization.
- (e) The contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Laboratory or Government. The Laboratory may charge to the contractor any additional cost of inspection or test when work is not ready at the time specified by the contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Laboratory and Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The contractor shall, without charge, replace or correct work found by the Laboratory not to conform to contract requirements, unless in the public interest the Laboratory consents to accept the work with an appropriate adjustment in contract price. The contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the contractor does not promptly replace or correct rejected work, the Laboratory may (1) by contract or otherwise, replace or correct the work and charge the cost to the contractor or (2) terminate for default the contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Laboratory decides to examine already completed work by removing it or tearing it out, the contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the contractor or its subcontractors, the contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Laboratory shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.



- (i) Unless otherwise specified in the contract, the Laboratory shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Laboratory determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Laboratory's rights under any warranty or guarantee.

58. WARRANTY OF CONSTRUCTION (based on FAR 52.246-21 MAR 1994)

- (a) In addition to any other warranties in this contract, the contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If the Laboratory takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Laboratory takes possession.
- (c) The contractor shall remedy at the contractor's expense any failure to conform, or any defect. In addition, the contractor shall remedy at the contractor's expense any damage to Government-owned or Laboratory-controlled real or personal property, when that damage is the result of --
 - (1) The contractor's failure to conform to contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) The Laboratory shall notify the contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Laboratory shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the contractor shall --
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of the Laboratory, if directed by the Laboratory; and
 - (3) Enforce all warranties for the benefit of the Laboratory, if directed by the Laboratory.
- (h) In the event the contractor's warranty under paragraph (b) of this clause has expired, the Laboratory may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the contractor or subcontractor or supplier at any tier, the contractor shall not be liable for the repair of any defects of material or design furnished by the Laboratory nor for the repair of any damage that results from any defect in Laboratory-furnished material or design.
- (j) This warranty shall not limit the Laboratory's rights under the Inspection of Construction clause of this contract with respect to latent defects, gross mistakes, or fraud.

59. TERMINATION FOR CONVENIENCE OF THE LABORATORY (FIXED PRICE) (based on FAR 52.249-2 APR 2012, ALTERNATE III SEPT 1996)

- (a) The Laboratory may terminate performance of work under this contract in whole or, from time to time, in part if the Laboratory determines that a termination is in the Laboratory's interest. The Laboratory shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Laboratory, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Laboratory, as directed by the Laboratory, all right, title, and interest of the contractor under the subcontracts terminated, in which case the Laboratory shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.



- (5) With approval or ratification to the extent required by the Laboratory, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Laboratory, transfer title to the Government and deliver to the Laboratory (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Laboratory.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Laboratory may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the Laboratory or the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Laboratory, any property of the types referred to in paragraph (b)(6) of this clause; provided, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Laboratory. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Laboratory under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Laboratory.
- (c) The contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Laboratory Subcontract Administrator upon written requires of the contractor within this 120-day period.
 - (d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the contractor may submit to the Laboratory a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Laboratory. The contractor may request the Laboratory to remove those items or enter into an agreement for their storage. Within 15 days, the Laboratory will accept title to those items and remove them or enter into a storage agreement. The Laboratory may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
 - (e) After termination, the contractor shall submit a final termination settlement proposal to the Laboratory in the form and with the certification prescribed by the Laboratory. The contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Laboratory upon written request of the contractor within this 1-year period. However, if the Laboratory determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the contractor fails to submit the proposal within the time allowed, the Laboratory may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
 - (f) Subject to paragraph (e) above, the contractor and the Laboratory may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
 - (g) If the contractor and the Laboratory fail to agree on the whole amount to be paid the contractor because of the termination of work, the Laboratory shall pay the contractor the amounts determined, as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:
 - (1) For contract work performed before the effective date of termination, the total (without duplication of any items) of --
 - (i) The cost of this work;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and
 - (iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Laboratory under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the contractor would have sustained a loss on the entire



- contract had it been completed, the Laboratory shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including --
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
 - (h) Except for normal spoilage, and except to the extent that the Laboratory expressly assumed the risk of loss, the Laboratory shall exclude from the amounts payable to the contractor under paragraph (g) of this clause, the fair value, as determined by the Laboratory, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Laboratory or to a buyer.
 - (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
 - (j) [Reserved]
 - (k) In arriving at the amount due the contractor under this clause, there shall be deducted --
 - (1) All unliquidated advance or other payments to the contractor under the terminated portion of this contract;
 - (2) Any claim which the Laboratory or the Government has against the contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the Laboratory.
 - (l) If the termination is partial, the contractor may file a proposal with the Laboratory for an equitable adjustment of the price(s) of the continued portion of the contract. The Laboratory shall make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Laboratory.
 - (m)
 - (1) The Laboratory may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the Laboratory believes the total of these payments will not exceed the amount to which the contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the Laboratory upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Laboratory because of the circumstances.
 - (n) Unless otherwise provided in this contract or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the Laboratory, at the contractor's office, at all reasonable times, without any direct charge. If approved by the Laboratory, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

60. 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.

61. SUSTAINABLE ACQUISITION PROGRAM (based on DEAR 952.223-78 OCT 2010 ALT I)



- (a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its employees and contractors. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well-being of employees, contractors, and visitors using the facility.
- (b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures in the Changes clause of this contract. The initiatives important to these Orders are explained on the following Government or Industry Internet Websites:
- (1) Recycled Content Products are described at <http://epa.gov/cpg>
 - (2) Biobased Products are described at <http://www.biopreferred.gov>
 - (3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products
 - (4) Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products
 - (5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site
 - (6) Green house gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>
 - (7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>
 - (8) Water efficient plumbing products are at <http://epa.gov/watersense>.
- (c) The clauses at FAR 52.223-2 Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of products unless that type of product –
- (1) Is not available;
 - (2) Is not life cycle cost effective or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable (EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level);
 - (3) Does not meet performance needs; or,
 - (4) Cannot be delivered in time to meet a critical need.
- (d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The contractor shall consider the best practices within the DOE Acquisition Guide, Chapter, 23, Acquisition Considerations Regarding Federal Leadership in Environment, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>. When developing the Bill of Materials for approval of the Contracting Officer or Representative, the contractor shall specify energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. Compliance with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings (Guiding Principles) shall be achieved through certification to the Leadership in Energy and Environmental Design (LEED) Gold level under the LEED rating system most suited to the building type .
- (e) Reserved.



- (f) In complying with the requirements of paragraph (c) of this clause, the Contractor(s) shall coordinate its activities with and submit required reports through the Laboratory Environmental Sustainability Coordinator or equivalent position. Reporting under this paragraph and paragraphs (g) and (h) of this clause is only required if the contract of subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding \$100,000 in any contract year, except for reporting on high performance sustainable buildings which may be required elsewhere in this contract.
- (g) The Contractor shall prepare and submit performance reports, if required, using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default.
- (h) These provisions shall be flowed down only to first tier subcontracts exceeding the simplified acquisition threshold that support operation of the DOE facility and offer significant subcontract opportunities for energy efficient or environmentally sustainable products or services. The Contractor, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (f) of this clause, will comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause, and submit the reports directly to the Prime Contractor's Environmental Sustainability Coordinator at the supported facility. The Contractor will advise the Ames Laboratory if is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (c) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Contractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

62. 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.

63. ACCOUNTS, RECORDS, AND INSPECTION (based on 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 the Laboratory, 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 the Laboratory or 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 Laboratory may from time to time direct during the progress of the work or, in any event, as the Laboratory 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 Laboratory 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 Laboratory may from time to time require.
- (f) Inspections. The Laboratory 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.

64. LAWS, REGULATIONS, AND DOE DIRECTIVES (based on DEAR 970.5204-2 DEC 2000)

- (a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the Laboratory Subcontract Administrator.
- (d) Except as otherwise directed by the Ames Laboratory, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down all requirements of the contract at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

65. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (based on DEAR 970.5227-5 AUG 2002)

- (a) The contractor shall report to the Laboratory Subcontract Administrator promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent 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 hereunder, the Contractor shall furnish to the Government, when requested by the Laboratory Subcontract Administrator, all evidence and information in possession of the contractor pertaining to such suit or claim. Except where the contractor has agreed to indemnify the Government, the contractor shall furnish such evidence and information at the expense of the Government.
- (c) The contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontract at any tier expected to exceed \$100,000.

66. BONDS AND INSURANCE (based on DEAR 970.5244-1 JAN 2013)



- (a) Definition. "Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.
- (b) Contracts exceeding \$100,000.
 - (1) Performance bonds. Unless the Laboratory Procurement Official determines that a lesser amount is adequate for the protection of the Laboratory, the penal amount of performance bonds must equal –
 - (i) 100 percent of the original contract price; and
 - (ii) If the contract price increases, an additional amount equal to 100 percent of the increase.
 - (2) Payment bonds.
 - (i) Unless the Laboratory Procurement Official makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—
 - (A) 100 percent of the original contract price; and
 - (B) If the contract price increases, an additional amount equal to 100 percent of the increase.
 - (ii) The amount of the payment bond must be no less than the amount of the performance bond.
- (c) Contracts exceeding \$25,000 but not exceeding \$100,000. Unless the Laboratory Procurement Official determines that a lesser amount is adequate for the protection of the Laboratory, the penal amount of the payment bond or the amount of alternative payment protection must equal—
 - (1) 100 percent of the original contract price; and
 - (2) If the contract price increases, an additional amount equal to 100 percent of the increase.
- (d) If the contract price increases, the Laboratory may require additional protection by directing the contractor to—
 - (1) Increase the penal sum of the existing bond;
 - (2) Obtain an additional bond; or
 - (3) Furnish additional alternative payment protection.
- (e) Reducing amounts. The Laboratory Procurement Official may reduce the amount of the security to support a bond, subject to the conditions of FAR 28.203-5(c) or 28.204(b).
- (f) Before undertaking any work under this contract, the contractor shall, except as otherwise approved by the Laboratory, take out and maintain at its own cost and expense, until the work called for hereunder shall be completed and accepted by the Laboratory, the following insurance in companies satisfactory to the Laboratory:

<u>LINE OF COVERAGE</u>	<u>LIMITS</u>		
GENERAL LIABILITY <input checked="" type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurring General Aggregate Limit Applies Per: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> Log	EACH OCCURRENCE		\$1,000,000
	Fire Damage		\$ 100,000
	Med Expense		\$ 50,000
	Personal & Adv Injury		\$1,000,000
	General Aggregate Products – COMP/OP AGG		\$1,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> Any Auto	COMBINED SINGLE LIMIT		\$1,000,000
WORKMAN'S COMPENSATION AND EMPLOYMENT LIABILITY	WC STATUTORY LIMITS		OTHER
WORKMAN'S COMPENSATION AND EMPLOYMENT LIABILITY	WC STATUTORY LIMITS	OTHER	
	E.L. EACH ACCIDENT		\$500,000
	E.L. DISEASE EA EMPLOYEE		\$500,000
	E.L. DISEASE-POLICY LIMIT		\$500,000



BUILDER'S RISK			100% Structure and Material Value (Subcontractor is responsible for any deductible)
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- (g) All policies shall provide by appropriate language that Ames Laboratory, Iowa State University and the United States Government are additional insureds, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution from other insurers of Ames Laboratory, Iowa State University and the United States Government are waived.
- (h) The contractor agrees to deliver to the Laboratory at the signing and delivery of the within contract, and in any event before any work is performed hereunder, certificates of the insurance companies as to the particulars of the insurance coverage above referred to, and such certificates shall contain a provision that such insurance will not be cancelled nor any change whatsoever made in the policies except upon not less than ten (10) days prior notice thereof to the Laboratory, mailed to it by registered mail, with postage prepaid, addressed to Ames Laboratory Purchasing, 211 TASF, Iowa State University, Ames, IA 50011-3020.
- (i) Before permitting any subcontractor to perform any work under this contract, the contractor shall require that such subcontractor furnish satisfactory evidence that it has taken out and maintains insurance in the same amounts and with the same provisions as required by the preceding paragraphs of this clause.
- (j) 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.
- (k) 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.
- (l) 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.
- (m) 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.

67. DEFAULT (FIXED PRICE CONSTRUCTION) (ISU OCT 2014, based on FAR 52.249-10 (APR 1984))

- (a) If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Laboratory may, by written notice to the contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Laboratory may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the Laboratory resulting from the contractor's refusal or failure to complete the work within the specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Laboratory in completing the work.
- (b) The contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause, if
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii)



acts of the Government in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the Laboratory or Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and the subcontractors or suppliers; and

- (2) The contractor, within 10 days from the beginning of any delay (unless extended by the Laboratory), notifies the Laboratory in writing of the causes of delay. The Laboratory shall ascertain the facts and the extent of delay. If, in the judgment of the Laboratory, the findings of fact warrant such action, the time for completing work shall be extended.
- (c) If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Laboratory.
- (d) The rights and remedies of the Laboratory in this clause are in addition to any other rights and remedies provided by law or under this contract.

68. STATE AND LOCAL TAXES (ISU OCT 2014, based on DEAR 970.5229-1(DEC 2000))

- (a) The contractor agrees to notify the Laboratory of any Federal excise tax or State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the Laboratory has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Laboratory. Any Federal excise tax or State or local tax, fee, or charge paid with the approval of the Laboratory, or on the basis of advice from the Laboratory that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) The contractor agrees to take such action as may be required or approved by the Laboratory to cause any Federal excise tax or State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Laboratory to seek recovery of any payments made, including assignment to the Laboratory or its designee of all rights to an abatement or refund thereof, and granting permission for the Laboratory or the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the Laboratory directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance - Litigation and Claims" at DEAR 970.5228-1 shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.
- (c) The Laboratory shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Laboratory.

69. 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.

70. PAYMENTS (ISU OCT 2014)

- (a) The Laboratory shall pay the contractor the contract price as provided in this contract.
- (b) The Laboratory shall upon the contractor's request make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Laboratory, on estimates approved by the Laboratory. The contractor shall in its request furnish a schedule of values of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. The contractor's request shall include a certification that "To the best of its knowledge and belief, (i) the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the



- contract, (ii) all payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code, and (iii) this request for progress payment(s) does not include any amounts which is intended to be withheld or retained from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.” In the preparation of estimates the Laboratory may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the contractor at locations other than the site may also be taken into consideration if --
- (1) Consideration is specifically authorized by this contract; and
 - (2) The contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.
- (c) In making these progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Laboratory finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Laboratory may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, the Laboratory shall retain an amount that the Laboratory considers adequate protection of the Laboratory and may release to the contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.
- (d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as --
- (1) Relieving the contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 - (2) Waiving the right of the Laboratory to require the fulfillment of all of the terms of the contract.
- (e) The Laboratory shall, after receipt of a proper invoice, reimburse the contractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after furnishing evidence of full payment to the surety.
- (f) Reserved
- (g) The Laboratory shall pay the amount due the contractor under this contract after --
- (1) Completion and acceptance of all work;
 - (2) Presentation of a properly executed invoice; and
 - (3) Presentation of release of all claims against the Laboratory and the Government arising by virtue of this contract. A release may also be required of the assignee if the contractor's claim to amounts payable under this contract has been assigned.
- (h) Terms: Net thirty (30) days.
- (i) Reserved
- (j) 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 remit the overpayment amount to the Laboratory's payment office along with a description of the overpayment, including the circumstances of the overpayment (e.g., duplicate payment, erroneous payment, date(s) of overpayment) and the Laboratory purchase order number or contract number.
- (k) If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the “unearned amount”), the Contractor shall so notify the Laboratory and pay the Laboratory interest on that unearned amount as calculated pursuant to FAR 52.232-5(d) and (j).

71. 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/her designee. All new requests must be submitted on the Laboratory's 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 by the Laboratory 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” as defined by the Government and access to a sensitive subject, Security, Counterintelligence, and Export Control reviews will need to occur. In such cases, the Laboratory’s host will submit a specific security plan to the Laboratory’s Foreign Visits and Assignments Office with the AL-473 form requesting the visit.

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/her 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.

72. 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.

73. REPORTS (ISU OCT 2014)

The contractor shall furnish intermediate reports to the Laboratory from time to time as detailed in the contract or otherwise when requested, in such form and number as may be required by the Laboratory, summarizing activities of the contractor under this contract and shall make such final reports as may be required by the Laboratory. All reports delivered to the Laboratory under this contract shall contain a signature page which will identify the persons preparing the report and the persons approving the report.

74. ENVIRONMENTAL PROTECTION (ISU OCT 2014)

In performing this contract, the contractor shall comply with the requirements set forth in all applicable Federal, State and local environmental protection laws, codes, ordinances, Executive Orders, regulations, rules, and directives.

75. ENVIRONMENT, SAFETY AND HEALTH (ISU OCT 2014)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of Ames Laboratory, DOE, and contractor employees and of members of the public and to protect the environment. This includes compliance with all the applicable Environment, Safety and Health (ES&H) regulations and requirements, including reporting requirements of DOE as identified by the Laboratory in writing from time to time. The regulations and requirements include Title 29 of the Code of Federal Regulations (CFR) including but not limited to parts 1910 and 1926, Title 40 CFR, Protection of Environment, 49 CFR, Transportation, and 10 CFR 851 Workers Safety and Health Program as well as other applicable state, federal, and local regulations for construction. The requirements also include the National Fire Protection Association (NFPA) 70E, “Standard for Electrical Safety in the Workplace.” The contractor shall indemnify, defend and hold the Laboratory, Iowa State University, the Board of Regents – State of Iowa, and the State of Iowa harmless in the event DOE imposes a fine or penalty upon any of them pursuant to a violation of 10 CFR 851, and such fine or penalty arises out of or is connected with the performance of work under this contract by the Contractor, its subcontractors, and/or their agents, representatives, servants or employees. The Laboratory shall notify the

contractor, in writing, of any noncompliance with the provisions of this clause and the corrective action to be taken, which may include suspension of employees from the site. DOE, if appropriate, can issue a Notice of Violation which can be accompanied by a daily fine per citation as described in 10 CFR 851.5. After receipt of such Notice, the contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Laboratory Procurement Official may issue an order stopping work in whole or in part. Any stop work order issued by a Laboratory Procurement Official under this clause (or issued by the contractor to a subcontractor) shall be without prejudice to any other legal or contractual rights of the Government or Laboratory. In the event that the Laboratory Procurement Official issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Laboratory Procurement Official. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause. In the event the Laboratory subsequently issues an order to the contractor to resume work, the contractor shall make no claim for an extension of time or for compensation for damages by reason of, or in connection with, such work stoppage. The contractor shall assure that all its employees and its subcontractors, including subcontractors hired subsequent to the commencement of on-site activities, are aware of and are following the contractor's approved Environment, Safety and Health Program (EH&S Program) / Corporate Safety Plan (CSP) and approved Job Safety Analysis, as well as all regulations in this clause.

The Laboratory Procurement Official, the Laboratory Construction Management, Project Manager, Laboratory ES&H Representatives and Manager, Department of Energy, and the Ames Site Office, have the authority to stop any work activity which is deemed to be in imminent danger of causing a fatality or serious injury.

A. Reporting Requirements

2. All contractor and subcontractor accidents and unauthorized releases to the environment occurring at the Laboratory site must be reported immediately by dialing the Laboratory's ES&H office at 515-294-2153. The accident or unauthorized release must be reported immediately to the Laboratory's Construction Field Representative, Technical Representative or Project Manager. In addition, the contractor shall complete an Incident & Concerns Reporting Form (#10200.088) provided by the Laboratory and submit these to the Laboratory's Construction Field Representative or Project Manager within 24 hours. The types of emergencies that must be reported include but are not limited to: fire, explosion, personnel injury/illness, security incident, vehicle accident, utility failure, possible contamination incident, or a toxic or flammable material spill or release.
3. The contractor shall investigate all Notice of Violations received from the DOE or the Laboratory and submit responses to the Laboratory's Construction Field Representative within 24 hours of receipt of the written citation.
4. The contractor is not authorized to dispose of any material on-site unless written approvals are obtained from the Laboratory. This includes but is not limited to the use of garbage and recycling dumpsters, the sinks in buildings, and discharges to the sewer systems. Violations shall be immediately reported to the Laboratory's Construction Field Representative.

B. Contractor Environment, Safety and Health (ES&H) Program and Implementation Plan

1. Within ten (10) calendar days after award of the contract, the contractor shall submit its ES&H Program, also referred to as the Corporate Safety Plan (CSP), which contains all programs that are relevant to the contractor's business activities encompassing all applicable aspects of those regulations and requirements cited at the beginning of this Section 72. The contractor is required to comply with the requirements set forth in its EH&S Program and Implementation Plan. The contractor's ES&H Program and Implementation Plan must be signed by a responsible company officer and as a minimum shall include the provisions set forth below.
 - a. A statement of the contractor's ES&H policy;



- b. The name and qualifications of the contractor's ES&H Representative and alternate and the names of competent persons for excavation, scaffolding, and confined space entry, etc., as required by the scope of work and/or work conditions;
 - c. The frequency of regular safety inspections to be conducted by the contractor;
 - d. The schedule of weekly tool box meetings to be held with contractor employees to emphasize project safety and health, environmental protection, and fire prevention;
 - e. The locations at which the "Worker Protection for DOE Contractor Employees" poster will be posted on the contractor's bulletin board(s);
 - f. Implementation of all ES&H requirements listed in the contract, including the specifications;
 - g. Employee's right to file a concern with DOE;
 - h. Drug-Free Workplace requirements; and
 - i. Disciplinary policy and procedures.
 2. The contractor's ES&H Program and Implementation Plan will be reviewed for compliance with the requirements established above. (A guide for the development of the Plan was included in the solicitation documents.) If found to be in compliance, the Laboratory will approve the Plan. Otherwise, it will be returned to the contractor with comments on areas not in compliance. A pre-construction meeting will be held, and field work will begin only after the Plan is approved. Any revisions subsequent to the initial approval shall be submitted and approved prior to the contractor's implementation of these revisions.
 3. The contractor is responsible for reviewing and approving its subcontractors' ES&H Program(s) and Implementation Plan(s) which must comply with the requirements of this contract prior to commencement of work on site, and ensuring compliance during performance of the work.
 4. If the contractor has an approved ES&H Program and Implementation Plan on file with the Laboratory, revisions necessary to address new work shall be submitted, reviewed, and approved prior to commencing new work.
- C. **Job Environmental Protection Planning**
To the extent required by the project specifications, a sedimentation and erosion control plan and a storm water pollution prevention plan shall be implemented by the contractor. The requirements are detailed in the project specifications. All modifications to these plans must be approved prior to implementation. If changes are made to the project work scope that affect these plans, the plans shall be updated by the contractor and approved by the Laboratory prior to the revised work scope taking place.
- D. **Job Safety Analysis (JSA)**
 1. The contractor must submit within ten (10) calendar days after contract award and have approved, prior to the pre-construction meeting, a job safety analysis which details the specific hazards associated with each phase of the job as well as the mitigating actions the contractor shall take to reduce the risk of injury. Safety Data Sheets (SDSs) for all chemicals used or brought on-site are to be submitted as part of this analysis.
 2. Specific procedures in the areas of fall protection, excavation, trenching, confined space, energized electrical work, asbestos abatement, and hoisting and rigging are required as job conditions dictate. Plans to address these activities must be available to the Laboratory prior to starting work. Names and qualifications of competent persons as defined by OSHA must be made available to the Laboratory upon request. Laboratory approval must be obtained prior to starting any job activity requiring an OSHA-defined competent person.
 3. The contractor's ES&H representative shall provide a Job Safety Orientation to all contractor and subcontractor employees prior to their starting work. The orientation, as a minimum, shall include a review of the JSA, all related permits and plans, and a review of the emergency numbers, egress routes and assembly points. Each contractor employee shall sign the Job Safety Analysis form to indicate having received the orientation. The signature list shall be available to the Laboratory at the end of the first work day and throughout the duration of the contract when signatures are added.



4. The Job Safety Analysis must be formally revised to incorporate changes as required by modifications in work scope during construction. The revisions must be approved prior to the activity taking place. All employees affected by any revisions to the approved JSA shall be notified and advised by the contractor consistent with D.3 (above).

5.

E. Contractor ES&H Representative

Contractors shall designate and identify a competent member of their organization whose duty shall be the implementation of the contractor's ES&H Program on the Laboratory site.

1. The contractor shall submit the names of the ES&H Representative and alternates to the Laboratory for approval prior to assignment of duties.
2. The ES&H Representative shall attend the pre-construction meeting and be present at all times work is being performed on site by the contractor or subcontractor. If the ES&H Representative must be off site, the contractor shall designate and notify the Laboratory of an alternate.
3. Duties of the contractor's ES&H Representative include, but are not limited to: enforcing the company ES&H Program as well as Laboratory requirements, providing job specific safety orientation, prevention of accidents, investigation of incidents/accidents and Notice of Violation(s) from DOE or the Laboratory, making daily inspections, and reporting safety related information.
4. The ES&H Representative must have the authority to stop work and change the operation to correct any deficiencies or to eliminate any hazards observed.
5. The ES&H Representative shall have taken, as a minimum, training equivalent to the OSHA 10 hour training course in construction safety before field work at Ames Laboratory begins. Documented evidence of attendance, signed by the OSHA certified instructor, shall be available to the Laboratory upon request.

F. Environment, Safety and Health Documentation

The Contractor shall, without additional expense to the Laboratory, be responsible for obtaining all necessary licenses. The contractor shall submit to the Laboratory the following documents, current certificates, etc. as required:

1. Equipment inspection documentation required by 29 CFR 1926, Subparts L and N, must be with the equipment and shall be available to the Laboratory prior to use. This includes, but is not limited to, personnel lifts, cranes, augers, suspended scaffolds, winches, spreader beams, and lifting devices.
2. If the contractor intends to administer first aid or Cardio Pulmonary Resuscitation (CPR), the contractor must comply with 29 CFR 1926. This list shall be part of the Construction Job Safety Analysis.
3. Safety Data Sheets (SDSs) must be maintained by the contractor at the job site. SDSs for all products and materials brought on site shall be posted on the contractor's bulletin board accessible to all contractor employees and the Laboratory. In addition, all MSDSs must be submitted as part of the Construction Job Safety Analysis.
4. Pressure vessel certificates per 29 CFR 1926.29 must be made available to the Laboratory if requested.
5. Documentation of employee training and/or proof of proficiency required by OSHA and this contract shall be available prior to commencement of work. Examples include CPR certifications, confined space training, respirator training, competent persons for excavations and scaffolding, NFPA 70E training for energized electrical work, appropriate asbestos abatement training, and fall protection training.

G. Variances



Requests for exceptions to Laboratory environment, health, and safety requirements, contractor's approved ES&H Program and Implementation Plan, contractor's Job Safety Analysis, or specified environmental plans must be submitted in writing to the Laboratory. Exceptions shall not be implemented without approval by the Laboratory.

H. ES&H Orientation and Site Access

All contractor personnel are to attend Contractor Safety Orientation (CSO) before starting work at the site.

I. Equipment and Tool Inspection

All tools and equipment brought on site by contractors and subcontractors will be inspected by the contractor for compliance with OSHA and Laboratory requirements prior to use. Tools and equipment also will be randomly inspected throughout the duration of the contract. Items found out of compliance shall be removed immediately from service, tagged as out of service and taken off site by the contractor by the end of that work shift.

J. Laboratory Site Rules

The following acts or conduct are prohibited at the Laboratory site and violations will result in disciplinary action.

1. Possession of weapons, firearms, ammunition, explosives or any other apparatus or material hazardous to the public or property.
2. Possession or illegal use of controlled substances or intoxicants or being under their influence.
3. Indecent behavior of any type.
4. Stealing, misuse or destruction of Laboratory or Government property.
5. Violation of site traffic and parking regulations.
6. Loitering outside of designated construction areas.

K. Laboratory Site ES&H Requirements

The following requirements must be included in the contractor's ES&H Program and Implementation Plan and implemented on the job site.

1. The Laboratory conducts work through the use of on-site permits. All required permits will be identified to the contractor and the Laboratory will arrange for all necessary permits. No work activity shall be performed without the required permits. Such permits include work entry, energized electrical work, open flame, confined space entry, digging, concrete coring, using powder actuated tools, and removing asbestos. The contractor shall comply with all restrictions or provisions listed on the permits. A permit to bring radioactive sources or x-ray equipment on site must be approved by the Laboratory in advance. All coring and penetrating equipment shall be properly grounded. For work outside of Ames Laboratory property or new building construction, the contractor shall have their own permitting system complying with all applicable regulations. These permits shall be made available to the Laboratory upon request.
2. All employees shall wear safety glasses with rigid side shields at all times in the construction work area unless a higher level of eye protection is required for special hazards. All eye protection must meet the requirement of 29 CFR 1926.102. Safety glasses must be ANSI approved and be marked with the ANSI marking "Z87.1" designation.
3. Hard hats shall be worn at all times in the construction work area. Hard hats shall meet the ANSI Z89.1 standard as defined by 29 CFR 1926.100 and bear the "Z89-1" designation. High voltage exposure work requires hard hats and shall meet ANSI Z89.2 standards and bear the "Z89.2" designation.
4. All employees shall wear clothing suitable for the work and weather conditions. The minimum shall be short (1/4 length) sleeve shirt, long trousers, and hard sole leather work boots providing ankle protection. In addition, any work that presents a greater hazard to the feet or toes requires the use of steel toes or metatarsal guards. Canvas, tennis, or deck shoes are not permitted within the construction work area.
5. Ground fault circuit interrupters must be provided for electric hand tools and portable generators. The assured equipment grounding program is not an acceptable alternative.



6. All vehicles and mobile powered equipment, except automobiles and pickup trucks, must have backup alarms.
7. Personnel lifts must be equipped with audible motion alarms for movement in any direction. All lifts must be equipped with a safety foot pedal, or other type of interlock to restrict movement.
8. If required by the equipment manufacturer, roll over protection structures shall be provided. Any modifications to lifting and hoisting equipment must be approved by the equipment manufacture.
9. Emergency egress routes must be kept clear at all times, including doors, corridors, work site, and staging areas.
10. No alarms, safety devices, etc. will be disabled without Laboratory approval.
11. The following lockout/tag-out procedures shall be enforced: Laboratory personnel responsible for the equipment or utility will de-energize systems and initiate lockout/tag-out. Contractor personnel must be trained in lockout/tag-out prior to participating in lockout/tag-out of hazardous energy sources and working on lockout/tag-out systems or equipment. Contractors must verify that the energy source is de-energized before starting work on the system. Contractor employees must apply their lock and tags to energy control devices. For work outside of Ames Laboratory property or new building construction the contractor shall follow their own lockout/tagout program complying with applicable regulations.
12. Fire watches shall be maintained during and for a minimum of thirty minutes after burning, welding, or other fire or spark generating work is completed. An open flame permit must be issued by the Laboratory prior to any welding/cutting operations in Ames Laboratory buildings and it must be posted at the guard station in G34 TASF. Open burning, fire barrels, or other open-flame heating devices having exposed fuel below the flame are prohibited. Flash back preventers are required on oxygen/fuel hoses. Spark arresters shall be provided on all smoke stacks permitting live sparks or hot material to escape.
13. A “multi-purpose” Class A-B-C dry chemical fire extinguisher, ten pound (minimum) with a pressure gauge and current inspection (within last 12 months), shall be on the construction site within 100 feet of the work area. An additional extinguisher is required for each open flame operation.
14. Contractors shall hold and document the following meetings:
 - a. Bi-weekly “Tool Box” meeting (5-15 minutes) for all contractor and subcontractor employees at the site to discuss pertinent safety topics.
 - b. Meeting minutes or discussion topics must be posted on the contractor's bulletin board for a period of one month following the meeting. Minutes shall include the date, person holding the meeting, subject covered, and signatures of attendees.
15. The use of explosives is prohibited.
16. Vehicle operators must have an appropriate valid driver's license when operating vehicles on site.
17. Portable metal ladders are prohibited.
18. The contractor's competent person performing the daily inspections required by OSHA, such as trench and excavation, ladder, and scaffold inspections, shall document each inspection. Such documentation shall be signed and include the date, time, and conditions found. Documentation shall be available for review by the Laboratory for the duration of the project.
19. The contractor must assign a trained and qualified competent person for any approved scaffolding use.



20. Respiratory Protection

If workers are required to wear respirators, a written respiratory protection program must be included in the contractor's ES&H Program and Implementation Plan.

A written respiratory protection program must be submitted for approval to the Laboratory prior to using a respiratory protection device, such as dust/mist masks, including those made of paper, half face air purifying respirators, full face air purifying respirators, or any atmosphere supplying respirator.

- a. Medical certification records must be submitted as required by 29 CFR 1910 and 1926. These records must contain the conclusions of a physician regarding the evaluation of the individual employee and consider the employee's physical and psychological ability to use respiratory protection equipment. The records must state whether the employee is able to wear air-purifying respirators, atmosphere supplying respirators, or both. The records must be signed by the evaluating physician and dated within one year of the date of the intended use of the respiratory protection equipment.
- b. Training records must be submitted which document that the employee was trained in and has mastered the training subjects in 29 CFR 1910.134. The records must be signed by the trainee and instructor and dated within one year of the date of the intended use of the respiratory protection equipment.
- c. Fit test records must be submitted that document the employee was fit tested by a competent fit tester with reliable testing equipment according to the testing requirement of 29 CFR 1910.134. The records must document which types (brands and part numbers or materials of construction and size of respirators) provided a satisfactory fit. The employee must be fitted with the respiratory equipment that will be used at the site. The records must be signed by the employee and the fit tester and dated within one year of the date of the intended use of the respiratory protection equipment.

L. Disciplinary Program (or equivalent approved by Ames Laboratory)

The contractor is required to develop and implement a disciplinary program to control poor performance, misconduct, negligence and safety violations by both its employees and that of any of its subcontractors. This program must be reflected in the contractor's ES&H Program and Implementation Plan. The contractor should have a plan similar to the one described below. The Laboratory will enforce the following Disciplinary Program, which includes disciplinary actions up to and including termination of the contract.

The Laboratory will issue verbal warnings to contractors and subcontractors for safety infractions and will issue written notices of safety violations for more serious or continual infractions. The following progressive program will be implemented in sequential stages based on the quantity of documented safety violations. The previous one year period from the current date will be utilized in determining the quantity of:

1. Stage 1 (Verbal Notification)
When a contractor employee is observed to be involved in a safety infraction which is not imminent danger, the employee shall be told of the infraction and the contractor's ES&H representative will be notified of the incident.
2. Stage 2 (First Documented Safety Violation)
After receiving verbal notification, if a contractor employee is observed to be involved in the same safety infraction, or an infraction which the employee should be cognizant of through his work qualifications, the contractor employee will receive a documented safety violation and the contractor's ES&H representative will receive a copy of the violation.



3. **Stage 3 (Second Documented Safety Violation)**
Upon receipt of a second documented safety violation, notifications as stated in Stage 2 above shall be completed. In addition, the contractor shall contact the Laboratory to discuss the nature of the violations and the contractor's corrective actions needed to avoid repeated unsafe work practices and the consequences thereof.
4. **Stage 4 (Third Documented Safety Violation)**
Upon receipt of a third documented safety violation the contractor employee's access to the Laboratory will be suspended for three working days. The contractor's management will be notified of this suspension by the Laboratory's Procurement office. Prior to returning to work at the Laboratory, contractor management and the contractor employee may be required to attend a meeting with Laboratory representatives.
5. **Stage 5 (Subsequent Safety Violations)**
A subsequent documented safety violation of any nature will be cause to suspend the contractor employee for two weeks. Additional safety violations will be cause for further suspension. Notification and conditions for granting return access to the Laboratory will be as described in Stage 4 above.

Imminent Danger

Imminent danger situations include, but are not limited to, working at heights above six feet without fall protection; not locking out, tagging and verifying control of hazardous energy before working; not complying with confined space entry requirements; and entering a trench, excavation or space without control measures in place. When a contractor employee is observed to be involved in a situation which places him/her or others in imminent danger of being seriously injured or killed, progressive discipline will not be enacted. The employee will instead be suspended from working on the Laboratory site for a period of six months. In addition, the contractor's ES&H representative may be suspended from working on the Laboratory site for three work days. Conditions for granting return access to the Laboratory will be as described in Stage 4 above.

Contractor's Supervisor, Foreman, and/or ES&H Representatives

The contractor's supervisor, foreman, and/or ES&H representative may receive a documented safety violation notice for failure to enforce safety program requirements. Any contractor's ES&H representative who receives a suspension of any kind will not be allowed to continue in the ES&H representative capacity until reinstated by the Laboratory. Any suspension invoked upon a contractor's supervisor, foreman, and/or ES&H representative will start on the day following the documented safety violation to allow the contractor time to arrange for a replacement, unless the violation involves imminent danger which warrants immediate removal from site. The contractor is responsible for submitting for approval, the name and qualifications of a replacement ES&H representative before work will continue. Once an ES&H representative's status has been terminated due to continued suspension, it is at the discretion of the Laboratory to determine reinstatement.

Cost to the Laboratory

If Laboratory disciplinary action results in suspension of contractor employee(s) including supervisors, foreman, and ES&H representative as discussed above, the contractor shall make no claim for an extension of time or for compensation for damages by reason of, or in connection with, this disciplinary action.

Bid List Removal and Disqualification

A contractor's ES&H performance will be an important factor for future consideration for bid lists and selection criteria. This will include a review by the Laboratory of the contractor's performance, misconduct, negligence, and safety violations by both its employees and that of any of its subcontractors. If it is determined by the Laboratory that the contractor has failed to implement its approved ES&H Program or the contractor has shown negligence in enforcing ES&H compliance on the Laboratory site, the contractor will be removed from the active bid list of contractors and shall not be allowed to bid work or work as a subcontractor on the Laboratory site for a period of time as determined by the Laboratory. For example, two suspensions in one year and a poor safety record are grounds for disqualification (i.e., removal from



active bidders list of contractors). The contractor may request reinstatement after a one year period. The contractor's request must be in writing and contain the company's Corporate Safety Plan.

M. Drug-Free Workplace

It is the Laboratory's policy to maintain a drug-free workplace. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on the Laboratory site. Also, contractor employees are prohibited from consuming alcohol at the Laboratory. Contractor and subcontractor employees who violate this policy will be subject to disciplinary action, including discharge.

The contractor and all lower tier subcontractors shall abide by the Drug-Free Workplace Act of 1988. Anyone performing work under this contract will 1) abide by the terms of this policy; and 2) notify their employer of any drug statute convictions for a violation occurring in the workplace no later than five (5) days after such convictions. The contractor will notify the Laboratory within ten (10) days following receipt of such information from an affected employee. Failure to provide such notification shall be reason for immediate discipline up to and including barring the employee site access.

76. 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 Procurement Official. Such written notification must be received by the Laboratory Procurement Official 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.

77. 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, and 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.

78. ASSIGNMENT AND SUBCONTRACTING (ISU OCT 2014)

- (a) Neither this contract nor any interest therein nor any claim thereunder 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, to a successor operator of the Laboratory, or as directed by the Government.
- (b) The contractor shall submit a written list of the names of all subcontractors who will perform any part of the work or supply any principal portions of the materials to the Laboratory within ten (10) days after the effective date of this contract or in any event prior to engaging subcontractors or ordering such materials. The Laboratory reserves the right to reject any subcontractor or supplier who is unable to demonstrate that it is qualified and experienced to perform the proposed portion of the work.

79. APPLICABLE LAW (ISU OCT 2014)

To the extent that Federal law does not apply and State law is applicable to this contract, the law of the State of Iowa shall apply and each part hereby consents to such jurisdiction.

80. 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, whether oral or in writing, 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. This contract may only be amended if done so in writing and signed by both parties.

81. 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.

82. 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 any publicity or advertising, including endorsements, without the prior written consent of such entities or persons.

83. SUSPECT COUNTERFEIT PARTS (DOE G 414.1-2B Chg 2 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 hereunder include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the contractor shall indemnify, defend and hold harmless the Laboratory, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure. Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules. The contractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory. In addition, because falsification of information or documentation may constitute criminal conduct, the Laboratory may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.

ATTACHMENT I TO SUSPECT/COUNTERFEIT PARTS CLAUSE

SUSPECT/COUNTERFEIT PART



HEADMARK LIST

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

Grade 5  Grade 8 

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

	MARK	MANUFACTURER		MARK	MANUFACTURER
J		Jinn Her (TW)	KS		Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

	MARK	MANUFACTURER		MARK	MANUFACTURER
A		Asahi Mfg. (JP)	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 YU) (Greater than 1/2 inch dia)			
	E	Dairei (JP)		UNY	Unyite (JP)

GRADE 8.2 FASTENERS WITH THE FOLLOWING HEADMARKS:

	MARK	MANUFACTURER
KS		Kosaka Kogyo (JP)

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

Type 1		MARK	MANUFACTURER
Type 2		A325 KS	Kosaka Kogyo (JP)
Type 3			

Headmarkings are usually raised - sometimes indented.

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

ANY BOLT ON THIS LIST SHOULD BE TREATED AS DEFECTIVE WITHOUT FURTHER TESTING. OR, IF YOU SEE ANY INDICATION THAT A CIRCUIT BREAKER MAY BE USED OR REFURBISHED, SEE.



APPENDIX A - NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<u>Timetables</u>	<u>Goals for Minority Participation in each Trade</u>	<u>Goals for Female Participation in each Trade</u>
All trades and crafts	2.4%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41CFR Part 60-4 shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employee identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is Ames, Story County, Iowa.