



**APPENDIX A**  
**AMES LABORATORY TERMS AND CONDITIONS**  
**(For Labor-Hour and Time and Materials 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 For those clauses which may have been superseded, the most recent version is incorporated despite the date of the clause listed.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).....	6
8.	PRICE REDUCTION FOR DEFECTIVE 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.	INTEGRITY OF UNIT PRICES (based on FAR 52.215-14 OCT 2010).....	9
13.	LIMITATIONS ON PASS-THROUGH CLAUSES (FAR 52.215-23 OCT 2009).....	9
14.	UTILIZATION OF SMALL BUSINESS CONCERNS (FAR 52.219-8 OCT 2014).....	10
15.	SMALL BUSINESS SUBCONTRACTING PLAN (based on FAR 52.219-9 OCT 2015).....	11
16.	NOTICE TO THE LABORATORY OF LABOR DISPUTES (FAR 52.222-1 FEB 1997).....	17
17.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (based on FAR 52.222-4 MAY 2014).....	17
18.	PROHIBITION OF SEGREGATED FACILITIES (FAR 52.222-21 APR 2015).....	18
19.	EQUAL OPPORTUNITY (FAR 52.222-26 APR 2015).....	18
20.	EQUAL OPPORTUNITY FOR VETERANS (FAR 52.222-35 OCT 2015).....	20
21.	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (FAR 52.222-36 JULY 2014).....	20
22.	EMPLOYMENT REPORTS ON VETERANS (FAR 52.222-37 OCT 2015).....	20
23.	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (FAR 52.222-40 DEC 2010).....	21
24.	COMBATING TRAFFICKING IN PERSONS (FAR 52.222-50 MARCH 2015).....	21
25.	EMPLOYMENT ELIGIBILITY VERIFICATION (FAR 52.222-54 OCT 2015).....	25
26.	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (based on FAR 52.223-15 DEC 2007).....	27
27.	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (FAR 52.223-18 AUG 2011).....	27
28.	DUTY FREE ENTRY (FAR 52.225-8 OCTOBER 2010).....	28
29.	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FAR 52.225-13 JUN 2008).....	29
30.	AUTHORIZATION AND CONSENT (FAR 52.227-1 DEC 2007).....	30



31.	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (FAR 52.227-2 DEC 2007).....	30
32.	RIGHTS TO PROPOSAL DATA (TECHNICAL) (FAR 52.227-23 JUNE 1987).....	30
33.	COST ACCOUNTING STANDARDS (based on FAR 52.230-2, paragraphs a, c, d OCT 2015) .....	30
34.	ADMINISTRATION OF COST ACCOUNTING STANDARDS (FAR 52.230-6 JUNE 2010) .....	31
35.	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (based on FAR 52.232-40 DEC 2013) .....	37
36.	BANKRUPTCY (FAR 52.242-13 JUL 1995).....	37
37.	STOP-WORK ORDER (FAR 52.242-15 AUG 1989, ALT I 1984).....	38
38.	CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (based on FAR 52.243-3 SEPT 2000) .....	38
39.	SUBCONTRACTS FOR COMMERCIAL ITEMS (based on FAR 52.244-6 OCT 2015).....	39
40.	INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR (based on FAR 52.246-6 MAY 2001) .....	39
41.	TERMINATION (COST REIMBURSEMENT) (based on FAR 52.249-6 MAY 2004) .....	40
42.	EXCUSABLE DELAYS (FAR 52.249-14 APR 1984).....	42
43.	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEAR 952.203-70 DEC 2000) .....	43
44.	ORGANIZATIONAL CONFLICTS OF INTEREST (DEAR 952.209-72 ALT 1 AUG 2009).....	43
45.	KEY PERSONNEL (based on DEAR 952.215-70 DEC 2000).....	45
46.	DISPLACED EMPLOYEE HIRING PREFERENCE (DEAR 952.226-74 JUN 1997).....	45
47.	RESEARCH MISCONDUCT (based on DEAR 952.235-71 JUL 2005).....	45
48.	LAWS, REGULATIONS AND DOE DIRECTIVES (based on DEAR 970.5204-2 DEC 2000).....	47
50.	STATE AND LOCAL TAXES (ISU OCT 2014, based on DEAR 970.5229-1 (DEC 2000) .....	47
51.	ACCOUNTS, RECORDS, AND INSPECTION (based on DEAR 970.5232-3 a-h DEC 2010) .....	48
52.	PROPERTY (DEAR 970.5245-1 DEC 2000).....	49
53.	CONDUCT OF EMPLOYEES (ISU OCT 2014).....	52
54.	WARRANTY OF SUPPLIES (ISU OCT 2014) .....	52
55.	PAYMENTS (ISU OCT 2014, based on FAR 52.232-7 (FEB 2007)) .....	52
56.	CONSIDERATION AND ALLOWABLE COSTS (ISU OCT 2014).....	53
57.	DISPUTES (ISU JUN 2015).....	54
58.	LABORATORY SITE ACCESS AND/OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (ISU OCT 2014) .....	55
59.	EXPORT CONTROLS (ISU OCT 2014) .....	55
60.	REPORTS (ISU OCT 2014) .....	55
61.	COMPLIANCE WITH LAW (ISU OCT 2014) .....	55
62.	ENVIRONMENTAL PROTECTION (ISU OCT 2014) .....	56
63.	LIMITATIONS PERIOD (ISU OCT 2014) .....	56
64.	INDEMNIFICATION (ISU OCT 2014) .....	56
65.	INSURANCE (ISU OCT 2014).....	56
66.	SUBCONTRACTS (ISU OCT 2014).....	57
67.	ASSIGNMENT (ISU OCT 2014) .....	57
68.	APPLICABLE LAW (ISU OCT 2014) .....	57
69.	INTEGRATION CLAUSE (ISU OCT 2014) .....	57
70.	NON-WAIVER OF DEFAULTS (ISU OCT 2014).....	57
71.	USE OF NAME (ISU OCT 2014).....	57
72.	SUSPECT COUNTERFEIT PARTS (DOE G 414.1-2B Chg 2 MAY 2013) .....	57

**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 \$100,000 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 as provided by the Laboratory that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (d) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have physical access to a federally-controlled facility or access to a Federal-controlled information system.

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
- (1) 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 debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the shelf item, the Contractor shall not enter into any subcontract, in excess of \$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 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 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 "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, defend 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, defend 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
- (2) 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 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.
- (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 subcontract or subcontract modification.
- (d) The contractor shall insert the substance of this clause, including this 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 the price or the date of award, whichever is later.

**12. INTEGRITY OF UNIT PRICES (based on FAR 52.215-14 OCT 2010)**

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

**13. LIMITATIONS ON PASS-THROUGH CLAUSES (FAR 52.215-23 OCT 2009)**

- (a) Definitions. As used in this contract –  
“Added value” means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).  
“Excessive pass-through charge”, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).



“No or negligible value” means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

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

“Subcontractor”, as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

- (b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.
- (c) *Reporting.* Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if—
  - (1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
  - (2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).
- (d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist;
  - (1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and
- (e) *Access to records.*
  - (1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor’s records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.
  - (2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor’s records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.
- (f) *Flowdown.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

#### 14. 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](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 3<sup>rd</sup> ST SW, Washington DS 20416; or
    - (iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

**15. 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 (1) 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 Subcontract administrator; and
  - (3) Goals and any deviations from the master plan deemed necessary by the Laboratory Subcontract administrator 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.

**16. NOTICE TO THE LABORATORY OF LABOR DISPUTES (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.

**17. 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 Subcontract administrator 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 Subcontract administrator 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 Subcontract administrator 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.

**18. 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](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).  
“Segregated facilities,” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.  
“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://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.

**19. 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](http://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.

**20. 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.

**21. 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.

**22. 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.

**23. 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](http://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.

**24. COMBATING TRAFFICKING IN PERSONS (FAR 52.222-50 MARCH 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](mailto: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.

## 25. 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 in 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.

**26. 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 a Federal facility, 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](http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm).

**27. 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.

**28. DUTY FREE ENTRY (FAR 52.225-8 OCTOBER 2010)**

- (a) *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
  - (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—
    - (i) Foreign supplies;
    - (ii) Estimated amount of duty; and
    - (iii) Country of origin.
  - (2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.
  - (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—
  - (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
  - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.
- (f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—
  - (1) Delivery address of the Contractor (or contracting agency, if appropriate);
  - (2) Government prime contract number;



- (3) Identification of carrier;
  - (4) Notation “UNITED STATES GOVERNMENT, \_\_\_\_\_ [agency] \_\_\_\_\_, Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from Tariff Schedules] \_\_\_\_\_, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;
  - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
  - (6) Estimated value in United States dollars.
- (h) The Contractor shall instruct the foreign supplier to—
- (1) Consign the shipment as specified in paragraph (g) of this clause;
  - (2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and
  - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—
- (1) Foreign supplies;
  - (2) Country of origin;
  - (3) Contract number; and
  - (4) Scheduled delivery date(s).
- (j) The Contractor shall include the substance of this clause in any subcontract if—
- (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
  - (2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.

**29. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FAR 52.225-13 JUN 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>.
- (a) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**30. 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.

**31. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (FAR 52.227-2 DEC 2007)**

- (a) The Contractor shall report to the Government through the Laboratory, 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 the event of any claim or suit against the Government, the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, or the State of Iowa, on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government or the Laboratory, when requested by the Government or the Laboratory, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government or Laboratory except where the Contractor has agreed to indemnify the Government or the Laboratory.
- (c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

**32. 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.

**33. 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 Subcontract administrator 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.
  - (i) 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.
  - (ii) 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.

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

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

- (a) 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 contact 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.

**35. 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.

**36. BANKRUPTCY (FAR 52.242-13 JUL 1995)**

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Laboratory Subcontract administrator 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.

**37. STOP-WORK ORDER (FAR 52.242-15 AUG 1989, ALT I 1984)**

(a) Ames Laboratory may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of this order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Ames Laboratory shall either -

- (1) Cancel the stop-work order; or
- (2) Terminated the work covered by the order as provided in the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. Ames Laboratory shall make an equitable adjustment in the estimated cost, the fee, or a combination thereof, and in other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost property allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that if the Ames Laboratory decides the facts justify the action, the Ames Laboratory may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Ames Laboratory shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Ames Laboratory shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**38. CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (based on FAR 52.243-3 SEPT 2000)**

(a) The Laboratory may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed
- (2) Time of performance (i.e., hours of the day, days of the week, etc.)
- (3) Place of performance of the services
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Laboratory in accordance with the drawings, designs, or specifications
- (5) Method of shipment or packing of supplies
- (6) Place of delivery.
- (7) Amount of Laboratory-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Laboratory will make an equitable adjustment in any one or more of the following and will modify the contract accordingly: (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) other affected terms.

(c) The contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Laboratory decides that the facts justify it, the Laboratory may receive and act upon a proposal submitted before final payment of the contract.

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

**39. 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 the agency Office of the Inspector General, with a copy to the Contracting Officer through the Laboratory Procurement Official.
  - (ii) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). Applies to subcontracts funded under the Recovery Act.
  - (iii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$7000,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
  - (iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
  - (v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
  - (vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a)).
  - (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
  - (viii) 52.222-37, Employment Reports on Veterans (Oct 2015) (38 U.S.C. 4212).
  - (ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.
  - (x) (A) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104 (g)). (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 682, 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. 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 minimum 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.

**40. INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR (based on FAR 52.246-6 MAY 2001)**

- (a) Definitions. As used in this clause--  
 “Contractor’s managerial personnel” means any of the contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of --
- (1) All or substantially all of the contractor’s business;
  - (2) All or substantially all of the contractor’s operation at any one plant or separate location at which the contract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of this contract.



- “Materials” includes data when the contract does not include the Warranty of Data clause.
- (b) The contractor shall provide and maintain an inspection system acceptable to the Laboratory covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the contractor shall be maintained and made available to the Laboratory during contract performance and for as long afterwards as the contract requires.
  - (c) The Laboratory and the Government have the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Laboratory and the Government may also inspect the plant or plants of the contractor or any subcontractor engaged in contract performance. The Laboratory and the Government shall perform inspections and tests in a manner that will not unduly delay the work.
  - (d) If the Laboratory or the Government performs inspection or test on the premises of the contractor or a subcontractor, the contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
  - (e) Unless otherwise specified in the contract, the Laboratory shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
  - (f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Laboratory may require the contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the terms of the contract, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
  - (g) If the contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Laboratory), the Laboratory may--
    - (1) By contract or otherwise, perform the replacement or correction, charge to the contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
    - (2) Terminate this contract for default.
  - (h) Notwithstanding paragraphs (f) and (g) above, the Laboratory may at any time require the contractor to remedy by correction or replacement, without cost to the Laboratory, any failure by the contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the contractor's managerial personnel or (2) the conduct of one or more of the contractor's employees selected or retained by the contractor after any of the contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
  - (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services and services originally delivered under this contract.
  - (j) The contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
  - (k) Unless otherwise specified in the contract, the contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

**41. TERMINATION (COST REIMBURSEMENT) (based on FAR 52.249-6 MAY 2004)**

- (a) The Laboratory may terminate performance of work under this contract in whole or, from time to time, in part if--
  - (1) The Laboratory determines that a termination is in the Laboratory's interest; or
  - (2) The contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Laboratory) after receiving a notice specifying the default. “Default” includes failure to make progress in the work so as to endanger performance.
- (b) The Laboratory shall terminate by delivering to the contractor a Notice of Termination specifying whether termination is for default of the contractor or for convenience of the Laboratory, the extent of termination, and the effective date. If after termination for default, it is determined that the contractor was not in default or that the contractor's failure to



- perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Laboratory.
- (c) 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), 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 cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) to the Government and, as directed by the Laboratory, 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, (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, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the contractor has been or will be reimbursed under this contract.
  - (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 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 subparagraph (c)(6) above; 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.
- (d) 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 Procurement Officer upon written request of the contractor within this 120-day period.
- (e) 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 the 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.
- (f) 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.



- (g) Subject to paragraph (f) of this clause, the contractor and the Laboratory may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the contractor paid the agreed amount.
- (h) If the contractor and the Laboratory fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Laboratory shall determine, on the basis of information available, the amount, if any, due the contractor and shall pay that amount, which shall include the following:
  - (1) If the termination is for the convenience of the Laboratory, include--
    - (i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;
    - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the contractor;
    - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Laboratory; however, the contractor shall discontinue these expenses as rapidly as practicable;
    - (iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the termination portion of the contract; and
    - (v) The reasonable costs of settlement of the work terminated, including--
      - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
      - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
      - (C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
  - (2) If the termination is for default of the contractor, include the amounts computed under (1) above but omit--
    - (i) Any amount for preparation of the contractor's termination settlement proposal; and
    - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Laboratory.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as modified by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) 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 this clause and not recovered by or credited to the Laboratory.
- (k) The contractor and the Laboratory must agree to any equitable adjustment in the fee for the continued portion of the contract when there is a partial termination. The Laboratory shall amend the contract to reflect the agreement.
- (l) If the termination is partial, the contractor may file with the Laboratory a proposal for an equitable adjustment of price(s) for 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) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**42. EXCUSABLE DELAYS (FAR 52.249-14 APR 1984)**

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



perform must be beyond the control and without the fault or negligence of the contractor. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be deemed to be in default, unless --
  - (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) The Laboratory ordered the contractor in writing to purchase these supplies or services from the other source; and
  - (3) The contractor failed to comply reasonably with this order.
- (c) Upon request of the contractor, the Laboratory shall ascertain the facts and extent of the failure. If the Laboratory determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Laboratory under the termination clause of this contract.

**43. 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.

**44. ORGANIZATIONAL CONFLICTS OF INTEREST (DEAR 952.209-72 ALT 1 AUG 2009)**

- (a) **Purpose.** The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) **Scope.** The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
  - (1) **Use of Contractor's Work Product.**
    - (i) The Contractor shall be ineligible to participate in any capacity in Department of Energy contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Government's Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
    - (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Government's Contracting Officer, in which case the restriction in this subparagraph shall not apply.
    - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.
  - (2) **Access to and use of information.**
    - (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department of Energy plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not—



- (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
  - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
  - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
  - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
  - (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Government's Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
  - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
- (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
  - (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

**45. KEY PERSONNEL (based on DEAR 952.215-70 DEC 2000)**

- (a) The personnel listed below or elsewhere in this contract are considered essential to the work being performed. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) notify the Laboratory Procurement Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Laboratory Procurement Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Laboratory Procurement Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**46. 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.

**47. RESEARCH MISCONDUCT (based on DEAR 952.235-71 JUL 2005)**

- (a) The contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.
- (b) Unless otherwise instructed by the Laboratory Subcontract administrator (LPO), the contractor must conduct an initial inquiry into any allegation of research misconduct. If the contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the contracting officer and, unless otherwise instructed, the contractor must:
  - (1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;
  - (2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.
  - (3) Inform the LPO if an initial inquiry supports a formal investigation and, if requested by the LPO thereafter, keep the LPO informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the contractor will forward to the LPO a copy of the evidentiary record, the investigative report, any recommendations made to the contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).
- (c) The Laboratory may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the LPO finds that:
  - (1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;
  - (2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;



- (3) Laboratory involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,
  - (4) The allegation involves possible criminal misconduct.
- (d) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Laboratory, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
- (1) Safeguards for information and subjects of allegations. The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.
  - (2) Objectivity and Expertise. The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.
  - (3) Timeliness. The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.
  - (4) Confidentiality. To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.
  - (5) Remediation and Sanction. If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the LPO. The contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.
- (e) The Laboratory reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If the Laboratory pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.
- (f) Definitions.
- “Adjudication” means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.
- “Fabrication” means making up data or results and recording or reporting them.
- “Falsification” means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- “Finding of Research Misconduct” means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.
- “Inquiry” means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.
- “Investigation” means the formal examination and evaluation of the relevant facts.



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

“Research” means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

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

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

- (g) By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.
- (h) The contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

**48. 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.
- (a) 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.
- (b) 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.

**49. 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.

**50. 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.

**51. 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.

**52. PROPERTY (DEAR 970.5245-1 DEC 2000)**

- (a) Furnishing of Government property. The Laboratory and the Government reserve the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the Laboratory Subcontract administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Laboratory and the Government reserve the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the Laboratory Subcontract administrator shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Laboratory, whichever first occurs. Property furnished by the Laboratory or Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.
- (c) Identification. To the extent directed by the Laboratory Subcontract administrator, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Laboratory Subcontract administrator, as shall indicate its ownership by the Government.
- (d) Disposition. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the Laboratory Subcontract administrator may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the Laboratory Subcontract administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Laboratory Subcontract administrator and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Laboratory, as the Laboratory Subcontract administrator may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the Laboratory Subcontract administrator, of all government property which had come into the possession or custody of the contractor under this contract.
- (e) Protection of government property--management of high-risk property and classified materials.
  - (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the Laboratory Subcontract administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.
  - (2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management



contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

- (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
  - (f) Risk of loss of Government property.
    - (1) (i) DOE has agreed that the contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
      - (A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;
      - (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Laboratory Subcontract administrator to safeguard such property under paragraph (e) of this clause; or
      - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
    - (ii) If, after an initial review of the facts, the Laboratory Subcontract administrator informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the Laboratory for the loss, destruction, or damage.
  - (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Laboratory shall be determined as follows:
    - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Laboratory Subcontract administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
    - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Laboratory Subcontract administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
  - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:
  - (1) Shall immediately inform the Laboratory Subcontract administrator of the occasion and extent thereof,



- (2) Shall take all reasonable steps to protect the property remaining, and
- (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Laboratory Subcontract administrator. The contractor shall take no action prejudicial to the right of the Laboratory and the Government to recover therefore, and shall furnish to the Laboratory and the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used only for the performance of this contract.
- (i) Property Management.
  - (1) Property Management System.
    - (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the Laboratory Subcontract administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.
    - (ii) In order for a property management system to be approved, it must provide for:
      - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
      - (B) [Reserved];
      - (C) Full integration with the contractor's other administrative and financial systems; and
      - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
    - (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.
  - (2) Property Inventory.
    - (i) Unless otherwise directed by the Laboratory Subcontract administrator, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
    - (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
  - (1) All or substantially all of the contractor's business; or
  - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
  - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
  - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
  - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

**53. 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.

**54. WARRANTY OF SUPPLIES (ISU OCT 2014)**

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

**Energy Consuming Products**

When the contract requires the specification or delivery of energy consuming products for use in Federal facility, the contractor will specify or deliver EnergyStar® qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for EnergyStar® at: <http://www.energystar.gov/products>, and FEMP at [http://www.eere.energy.gov/femp/procurement/eep\\_requirements.cfm](http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm).

**Environmentally Preferable Purchasing for Certain Electronics**

When the contract requires the specification or delivery of certain electronics, including computing devices, imaging devices or monitors in a DOE facility, the contractor will specify or deliver Electronic Product Environmental Acquisition Tool (EPEAT) registered products provided such products are available, are life cycle cost efficient, and meet applicable performance requirements. Information on EPEAT-registered products is available at [www.epeat.net](http://www.epeat.net).

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

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

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

**55. PAYMENTS (ISU OCT 2014, based on FAR 52.232-7 (FEB 2007))**

- (a) The contractor shall be paid as follows with respect to the allowable costs set forth in the "Consideration and Allowable Costs" clause:
  - (1) Hourly Rate - The amounts computed by multiplying the appropriate loaded hourly rate, or rates by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.
  - (2) Other Allowable Costs - The actual direct cost to the contractor for other allowable costs.
- (b) The contractor shall be paid monthly (or at more frequent intervals if approved by the Laboratory) upon submission of properly certified and correct invoices bearing the contract number and the cost code(s) if specified elsewhere in the contract, to: Accounts Payable – 224 TASF – Iowa State University – Ames, IA 50011-3020. Invoices may also be e-mailed to [invoiceinbox@ameslab.gov](mailto:invoiceinbox@ameslab.gov). Such invoices must be sufficiently detailed to permit the identification of the various compensable items under this contract. Said payments shall be tentative and subject to subsequent audit and adjustment to assure that payment is properly effected in accordance with the provisions of this contract.
- (c) Attached to each invoice and copy thereof, there must be furnished the following certification which must be manually signed by an authorized representative of the contractor:



- “I certify that this invoice is correct and includes only costs incurred and allowed in accordance with the referenced contract; that the amounts claimed represent fair charges against Ames Laboratory and that reimbursement has not and will not be received or sought therefore under any other Government contract or other source of funds”.
- (d) By the twenty-fifth (25th) day of each month, during performance of this contract, the contractor shall, either independent of or as part of a monthly invoice, furnish the Laboratory an estimate of accrued expenditures for that month.
  - (e) Prior to final payment under this contract, the contractor shall submit a final invoice clearly identified as such. The contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall also execute and deliver:
    - (1) an assignment to the Laboratory, in form and substance satisfactory to the Laboratory, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the contractor has been reimbursed by the Laboratory under this contract; and
    - (2) a release discharging the Laboratory, the Government, and their officers, agents, and employees from all liabilities, obligations, and claims arising out of or by virtue of this contract.
  - (f) The contractor shall keep and maintain records and books of account which show accurately, and in an adequate manner, the basis for receiving compensation under this contract. With respect to contractor's personnel costs, the total time paid for all of contractor's personnel chargeable to the Laboratory, shall be recorded on readily auditable and certified correct time records in accordance with contractor's normal practices. The contractor shall preserve said records and books of account for a minimum period of three (3) years after the date of final payment under this contract. The Laboratory shall at all reasonable times, prior to and for a minimum of three (3) years after the date of final payment under this contract, have the right to examine and make copies of such records and books of account.
  - (g) Payment terms shall be: Net 30 days.
  - (h) 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.

**56. CONSIDERATION AND ALLOWABLE COSTS (ISU OCT 2014)**

In full and complete monetary consideration for the performance of work under this contract, the Laboratory shall pay the contractor for the following items of allowable costs:

- (a) Labor. For time worked in the performance of this contract by contractor personnel (excluding travel time) at the appropriate loaded hourly rates specified for the pertinent labor classifications. The appropriate loaded hourly rates shall apply during the term(s) specified. Said loaded rates shall include wages, overhead, general and administrative expense and profit (as appropriate); provided, however, that the loaded hourly rates shall not be varied by virtue of the contractor having performed work on an overtime basis. Said loaded hourly rates shall not be subject to adjustment for the specific periods stated. Additional labor classifications and their applicable hourly rates may be added by written agreement of the parties.
- (b) Materials, Supplies, Computer Time. The actual direct cost to the contractor for materials, supplies, and computer time necessary for the performance of the work under this contract; provided, however, that the contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. Credit shall be given to the Laboratory for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the contractor, or would have so accrued except for the fault or neglect of the contractor. Such benefits lost through no fault or neglect on the part of the contractor, or lost through fault of the Laboratory, shall not be deducted from gross costs.
- (c) Travel (based in part on FAR 52.247-63 (JUNE 2003)). In connection with furnishing the services under this contract it may be necessary for contractor personnel to make authorized trips from time to time on official business. It is noted that travel time is not compensable (see Paragraph (a) Labor above) and travel expenses are reimbursable in accordance with the following rules:



- (1) Travel required by contractor personnel for performance of services at a location away from the contractor's base must be approved by the appropriate Laboratory Division Director or his/her designee. In no case should such travel be accomplished unless it has been approved by the Laboratory.

In addition, any foreign travel charged directly shall be subject to the prior approval of the Laboratory and the DOE, regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of the United States and its territories and possessions, Puerto Rico and Northern Mariana. Requests for approval, if required, shall be submitted in accordance with DOE procedures prior to the planned departure date, be on a Request for Approval of Foreign Travel form (DOE F 551.1), and when applicable, include a notification and other requirements respecting proposed sensitive foreign nations travel.

Transportation of personnel or property outside the United States and its territories and possessions should be on a U. S.-flag air carrier to the extent that service by these carriers is available. In situations where it is not, a "Statement of Unavailability of U. S.-Flag Air Carriers" shall be included on vouchers indicating that a U. S.-flag air carrier was not available or the specific reasons should be given as to why it was necessary to use foreign flag air carrier service.

- (2) As full reimbursement for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in connection with the performance of services away from the contractor's base and travel authorized in accordance with paragraph 1., above, the contractor shall be reimbursed its allowable travel costs. Allowable travel costs will be determined in accordance with Federal Acquisition Regulation (FAR) 31.205-46 Travel Costs in effect as of the date of this agreement, however, the foregoing notwithstanding each expenditure of \$75 or more must be supported by a receipt. Contractors will only be reimbursed for a travel expenditure more than \$75 that is supported by a receipt.
- (d) Subcontracts and Consultants. The actual direct cost to the contractor of such subcontractor or consultant services as are expressly approved in writing by the authorized Laboratory Subcontract administrator.
- (e) Other. Sums sufficient to reimburse the contractor for such other direct costs as the Laboratory considers reasonable and necessary for the performance of work under this contract and are not covered by the foregoing paragraphs of this clause; provided, however, that such direct costs must be allowable in accordance with the cost principles and procedures

of Subpart 31 of the Federal Acquisition Regulations (FAR), 48 CFR 1, as modified by Part 931 of the Department of Energy Acquisition Regulations (DEAR), 48 CFR 9, in effect on the date of this contract.

## 57. DISPUTES (ISU JUN 2015)

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

provided, however, that nothing in this clause shall prohibit the Laboratory, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that the Laboratory so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as the Laboratory.

**58. 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.

**59. 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.

**60. 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.

**61. COMPLIANCE WITH LAW (ISU OCT 2014)**

The contractor shall procure all necessary permits or licenses necessary for it to complete the work herein, and abide by all applicable laws, executive orders, rules, regulations, codes, ordinances, and directives of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

**62. 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.

**63. LIMITATIONS PERIOD (ISU OCT 2014)**

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

**64. INDEMNIFICATION (ISU OCT 2014)**

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

**65. INSURANCE (ISU OCT 2014)**

(a) 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>	
<b>GENERAL LIABILITY</b> <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	\$1,000,000	
Products – COMP/OP AGG	\$1,000,000	
<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> Any Auto	COMBINED SINGLE LIMIT	
\$1,000,000		
<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> Occurring <input type="checkbox"/> Claims Made	EACH OCCURRENCE AGGREGATE	
\$1,000,000		
<b>WORKERS’ COMPENSATION AND EMPLOYMENT LIABILITY</b>	WC STATUTORY LIMITS	OTHER
	E.L. EACH ACCIDENT	
	\$500,000	
	E.L. DISEASE EA EMPLOYEE	
\$500,000		
E.L. DISEASE-POLICY LIMIT		\$500,000

(b) All policies shall provide by appropriate language that Ames Laboratory, Iowa State University and the United States Government are additional insureds, and that the insurance afforded by such policies is primary insurance.

(c) 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.



- (d) 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.

**66. SUBCONTRACTS (ISU OCT 2014)**

- (a) "Subcontract," as used in this clause, includes but is not limited to personal service or vendor agreements, and purchase orders. The contractor shall obtain the Laboratory's written consent before placing any subcontract for furnishing any of the work called for in this contract, except for purchase of raw material or commercial stock items.
- (b) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.404-4(c)(4)(i) of the Federal Acquisition Regulations (FAR).
- (c) The Laboratory reserves the right to review the contractor's purchasing system as set forth in FAR Subpart 44.3.
- (d) Unless the consent or approval specifically provides otherwise, neither consent by the Laboratory to any subcontract nor approval of the contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the contractor of any responsibility for performing this contract.

**67. ASSIGNMENT (ISU OCT 2014)**

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

**68. 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 party hereby consents to such jurisdiction.

**69. 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.

**70. 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.

**71. 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.

**72. 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

J

Jinn Her (TW)



MARK

MANUFACTURER

KS

Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:



MARK

MANUFACTURER

A

Asahi Mfg. (JP)



MARK

MANUFACTURER

KS

Kosaka Kogyo (JP)



MARK

MANUFACTURER

NF

Nippon Fasteners (JP)



MARK

MANUFACTURER

RT

Takai Ltd (JP)



MARK

MANUFACTURER

H

Hinomoto Metal (JP)



MARK

MANUFACTURER

FM

Fastener Co of Japan (JP)



MARK

MANUFACTURER

M

Minamida Sieybo (JP)



MARK

MANUFACTURER

KY

Kyoei Mfg (JP)



MARK

MANUFACTURER

MS

Minato Kogyo (JP)



MARK

MANUFACTURER

J

Jinn Her (TW)



MARK

MANUFACTURER

Hollow Triangle

Infasco (CA TW JP YU) (Greater than 1/2 inch dia)



MARK

MANUFACTURER

E

Daiei (JP)



MARK

MANUFACTURER

UNY

Unytite (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

A325 KS

Kosaka Kogyo (JP)

Type 2



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.**