

APPENDIX A AMES LABORATORY TERMS AND CONDITIONS

(For Architect-Engineer Labor-Hour and Time and Materials Contracts, Jan. 2011)

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1. COVENANT AGAINST CONTINGENT FEES (FAR 52.203-5 APR 1984)

(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.

2. 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.

3. ANTI-KICKBACK PROCEDURES (FAR 52.203-7 JUL 1995)

(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, directly or indirectly, 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 Department of Justice.



- (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.

4. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (FAR 52.203-12 SEP 2007)

(a) Definitions.

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

“Covered Federal action,” as used in this clause, means any of the following Federal actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing amending, or modifying any Federal contract grant, loan, or cooperative agreement.

“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 with respect to expenditures specifically permitted by other Federal law.

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

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

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

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

the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

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

- (b) Prohibition. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.
 - (1) The term appropriated funds does not include profit or fee from a covered Federal action.
 - (2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.
- (c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:
 - (1) Agency and legislative liaison by Contractor employees.
 - (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency of Congress is permitted at any time.
 - (ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-
 - (A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or

- (B) The application or adaptation of the person's products or services for an agency's use.
 - (iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested by 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 professional and technical services expressly authorized by paragraph (b)(3)(ii) 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 \$100,000.

5. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (FAR 52.204-9 SEPT 2007)

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

6. SUBCONTRACTOR COST OR PRICING DATA (FAR 52.215-12 OCT 1997)

- (a) Before awarding any subcontract expected to exceed the threshold for submission of 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 cost or pricing data at FAR 15.403-4, the contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), 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 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 cost or pricing data for the subcontract; or
 - (2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data -- Modifications.

7. INTEGRITY OF UNIT PRICES (FAR 52.215-14 OCT 1997)

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

8. UTILIZATION OF SMALL BUSINESS CONCERNS (FAR 52.219-8 MAY 2004)

- (a) 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 let 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.
- (b) 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.

- (c) 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” means a small business concern that represents, as part of its offer, that--

- (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or
- (5) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“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.

- (d) 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.

9. 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.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (FAR 52.222-4 JUL 2005)

- (a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government or the Laboratory. The Laboratory Procurement Official will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) Withholding for unpaid wages and liquidated damages. The Laboratory Procurement Official will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Laboratory Procurement Official will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (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 Davis-Bacon Act.

(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.

11. WALSH-HEALEY PUBLIC CONTRACTS ACT (FAR 52.222-20 AS MODIFIED BY DOE DEC 2006)

Except as otherwise may be approved, in writing, by the Laboratory Procurement Official, the contractor agrees to insert the following provision in noncommercial Purchase Orders and subcontracts under this contract. "If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect."

12. PROHIBITION OF SEGREGATED FACILITIES (FAR 52.222-21 FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(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.

13. EQUAL OPPORTUNITY (FAR 52.222-26 MAR 2007)

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



- (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, 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, 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.

14. EQUAL OPPORTUNITY FOR VETERANS (FAR 52.222-35 SEPT 2010)

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

“All employment openings” means all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Executive and top management” means any employee—

- (1) Any employee –
 - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
 - (ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
 - (iii) Who customarily and regularly directs the work of two or more other employees;
 - (iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is corporate or other type of organization, and who is actively engaged in its management.

“Other protected veteran” means any other veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

“Positions that will be filled from within the Contractor’s organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Recently separated veteran” means any veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval or air service.

- (b) General.



- (1) The Contractor shall not discriminate against the individual because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:
 - (i) Recruitment, advertising, and job application procedures.
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
 - (iii) Rate of pay or any other form of compensation and changes in compensation.
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - (v) Leaves of absence, sick leave, or any other leave.
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
 - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
 - (viii) Activities sponsored by the Contractor including social or recreational programs.
 - (ix) Any other term, condition, or privilege of employment.
 - (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
 - (3) The Department of labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.
- (c) Listing openings.



- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.
- (2) The Contractor shall make the listing of employment openings with the appropriate employment delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency job bank in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.
- (d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.
- (e) Postings.
 - (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
 - (2) The employment notices shall—
 - (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

- (ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.
- (3) The Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.
- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions (see 41 CFR 60-300.66) may include-
 - (1) Withholding progress payments;
 - (2) Termination or suspension of the contract; or
 - (3) Debarment of the contractor.
- (g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

15. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (FAR 52.222-36 OCT 2010)

- (a) General.
 - (1) Regarding any position for which the employee or applicant for employment is qualified, the contractor shall not discriminate against any employee or applicant because of physical or mental disability. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as —
 - (i) Recruitment, advertising, and job application procedures;



- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) Postings.
- (1) The contractor agrees to post employment notices stating –
 - (i) The contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Laboratory Procurement Official.

(3) The contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

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

(d) *Subcontracts.* The contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

16. EMPLOYMENT REPORTS VETERANS (FAR 52.222-37 SEPT 2010)

(a) *Definitions.* As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “other protected veteran,” and “recently separated veteran,” have the meanings given in the Equal Opportunity for Veterans clause 52.222-35.

(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, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and the minimum number of employees of the Contractor 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 during the most recent 12-month period as of 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 \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

17. COMBATING TRAFFICKING IN PERSONS (FAR 52.222-50 FEB 2009)

- (a) Definitions – As used in this clause—

“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.

“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.

- (b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees 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; or (3) use forced labor in the performance of the contract.
- (c) Contractor Requirements. The Contractor shall:
 - (1) Notify its employees of (i) the United States Government’s zero tolerance policy described in paragraph (b) of this clause; and (ii) The actions that will be taken against employees 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 or subcontractors that violate the policy in paragraph (b) of this clause.
- (d) Notification. The contractor shall inform the Laboratory Procurement Official immediately of (1) any information it receives from any source (including host country law enforcement) that alleges a contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and (2) any actions taken contractor employees, subcontractors, or subcontractor employees pursuant to this clause.
- (e) Remedies. In addition to other remedies available to the Laboratory, contractor’s failure to comply with the requirements of paragraphs (c), (d), or (f) 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) Subcontracts. The contractor shall include the substance of this clause, including this paragraph (f) in all subcontracts.
- (g) Mitigating Factor. The Laboratory Procurement Official may consider whether the contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. 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/g/tip>.

18. EMPLOYMENT ELIGIBILITY VERIFICATION (FAR 52.222-54 JAN 2009)

(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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), 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, 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, 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
 - (ii) 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
 - (iii) 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, 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, 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 \$3,000; and
 - (3) Includes work performed in the United States.

19. TOXIC CHEMICAL RELEASE REPORTING (FAR 52.223-14 AUG 2003)

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if —
 - (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
 - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
 - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (4) The facility does not fall within Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

- (i) Major group code 10 (except 1011, 1081, and 1094).
 - (ii) Major group code 12 (except 1241).
 - (iii) Major group codes 20 through 39.
 - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
 - (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, 5171, 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or
- (5) The facility is not located in the United States or its outlying areas.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt —
- (1) The Contractor shall notify the Laboratory Procurement Official; and
 - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall —
 - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Laboratory Procurement Official may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall —
- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

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

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any

proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at:

<http://www.treas.gov/offices/enforcement/ofac/sdn/>.

More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's website at:

<http://www.treas.gov/offices/enforcement/ofac/>.

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

21. 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 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.

22. 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.
23. PATENT INDEMNITY (FAR 52.227-3 APR 1984)
- (a) The Contractor shall indemnify the Government, the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, and the State of Iowa and their officers, agents, and employees against liability, including costs, for infringement of any United States (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this Contract, or out of the use or disposal by or for the account of the Government or the Laboratory of such supplies or construction work.
 - (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government or the Laboratory of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:
 - (i) An infringement resulting from compliance with specific written instructions of the Laboratory or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Contract not normally used by the Contractor;
 - (ii) An infringement resulting from the Government or the Laboratory making an addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
 - (iii) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

24. 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.

25. DESIGN WITHIN FUNDING LIMITATIONS (FAR 52.236-22 APR 1984)

- (a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.
- (b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor’s revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.
- (c) The estimated construction contract price for the project described in this contract is \$_____.

26. RESPONSIBILITY OF ARCHITECT-ENGINEER CONTRACTOR (FAR 52.236-23 APR 1984)

- (a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither the Government’s review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain

liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

- (c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.
- (d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

27. WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (FAR 52.236-24 APRIL 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

28. REQUIREMENTS FOR REGISTRATION OF DESIGNERS (FAR 52.236-25 JUNE 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

29. BANKRUPTCY (FAR 52.242-13 JUL 1995)

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

30. SUSPENSION OF WORK (FAR 52.242-14 APR 1984)

- (a) The Laboratory may order the contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Laboratory determines appropriate for the convenience of the Laboratory.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Laboratory in the administration of this contract, or (2) by the Laboratory's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or

interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the contractor shall have notified the Laboratory in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (FAR 52.244-4 AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

32. 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.
- (b) 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.

33. 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.
34. 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.

35. KEY PERSONNEL (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.

36. 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.

37. ACCESS TO AND OWNERSHIP OF RECORDS (DEAR 970.5204-3 JUL 2005)

- (a) Laboratory-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Laboratory and shall be delivered to the Laboratory or otherwise disposed of by the contractor either as the Laboratory Procurement Official may from time to time direct during the progress of the work or, in any event, as the Laboratory Procurement Official shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The Laboratory Procurement Official shall identify which of the following categories of records will be included in the clause.]
 - (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.



- (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
 - (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 - (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Laboratory.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Laboratory, shall be delivered to the Laboratory or its designees, including successor contractors. Upon delivery, title to such records shall vest in the Laboratory or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Laboratory or its designees at all reasonable times, and the contractor shall afford the Laboratory or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Laboratory Procurement Official, the contractor shall deliver such records to a location specified by the Laboratory Procurement Official for inspection, copying, and audit. The Laboratory or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Laboratory or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until the Laboratory authorizes disposal. The Laboratory may waive application of these record retention schedules, if, upon termination or completion of the contract, the Laboratory exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the Laboratory Procurement Official);
 - (2) The Laboratory Procurement Official determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

38. ACCOUNTS, RECORDS, AND INSPECTION (DEAR 970.5232-3 a-g, h AUG 2009)

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for

such an audit to be performed by the cognizant government audit agency through the Contracting Officer.

- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.
- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

39. 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 Procurement Official, 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 Procurement Official 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 Procurement Official, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Laboratory Procurement Official, 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 Procurement Official 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 Procurement Official may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Laboratory Procurement Official and the contractor 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 Procurement Official may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the Laboratory Procurement Official, 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 Procurement Official, or in the absence of such direction, in accordance with

sound business practice, to safeguard and protect government property in the contractor's possession or custody.

- (2) In addition, the contractor shall ensure that adequate safeguards are in place, and 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 Procurement Official 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 Procurement Official 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 Procurement Official 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 Procurement Official 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 Procurement Official 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 Procurement Official. 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 Procurement Official 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) Employee personal responsibility and accountability for Government-owned property;
 - (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 Procurement Official, 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.

40. BAR ON CONTRACTING (MAY 2001)

Any firms involved in the furnishing of architect-engineering services under this contract (including their parent firms, subsidiaries or affiliates), and any successors in interest thereto, are ineligible until completion of construction of the facility to be designed hereunder to compete for or be awarded or perform any work under any contract or subcontract for the furnishing of supplies and/or services for construction work with respect to the facility designed hereunder, and the design prepared hereunder shall not incorporate the products of any such firm. Neither shall such a firm be allowed to perform any such work with its own forces. The foregoing shall not preclude such firms from providing construction management services for the facility designed hereunder, provided the contract therefore requires that all physical construction and related supply contracts or subcontractors are to be competitively bid and provided that all such firms are ineligible to bid or perform any work under such contracts or subcontract.

41. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (ISU APR 2009)

(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, 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 Procurement Official 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 Procurement Official 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 Procurement Official.
 - (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 Procurement Official based upon the facts shall be allowed against the amount of a contract price reduction if—
 - (A) The Contractor certifies to the Laboratory Procurement Official that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
 - (ii) An offset shall not be allowed if—
 - (A) The understated data were known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The Laboratory proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the Laboratory at the time such overpayment is repaid—
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Laboratory is repaid by the Contractor at the

applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

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

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

42. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (ISU APR 2009)

- (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 Procurement Official 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 Procurement Official 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 Procurement Official.

- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
- (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Laboratory Procurement Official based upon the facts shall be allowed against the amount of a contract price reduction if—
 - (A) The Contractor certifies to the Laboratory Procurement Official that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
 - (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Laboratory proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Laboratory is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

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

43. CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (ISU APR 2009)

- (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.

44. INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR (ISU APR 2009)

- (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.

45. TERMINATION (COST REIMBURSEMENT) (ISU APR 2009)

- (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.

46. STATE AND LOCAL TAXES (ISU APR 2009)

- (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.

47. CONDUCT OF EMPLOYEES (ISU APR 2009)

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.

48. PAYMENTS (ISU APR 2009)

- (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. 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 the above bill is correct and just; that the amounts claimed represent fair charges against Ames Laboratory and that reimbursement has not and will not be received therefore under any other Government contract or other source of Government funds”.
- (d) By the twenty-fifth (25th) day of each month, during performance of this contract, the contractor shall furnish the Laboratory an estimate of accrued expenditures for that month.
- (e) The contractor shall identify the final invoice for the work by affixing in a prominent place the words FINAL INVOICE.
- (f) Prior to final payment under this contract, the contractor shall submit a completion invoice and the contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall 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
 - (3) 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.
- (g) 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.
- (h) Payment terms shall be: Net 30 days.
- (i) 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.

49. CONSIDERATION AND ALLOWABLE COSTS (ISU APR 2009)

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 (whether or not by formal modification of this contract).
- (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 his 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. When unable to take advantage of such benefits, it shall promptly notify the Laboratory to that effect, and give the reason therefore. 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. 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, the District of Columbia, the Commonwealth of Puerto Rico and possessions of the United States 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 \$25.00 or more must be supported by a receipt. Contractors will only be reimbursed for a travel expenditure over \$25.00 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 Procurement Official.
- (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 Regulation (FAR), 48 CFR 1, as modified by Part 931 of the Department of Energy Acquisition Regulation (DEAR), 48 CFR 9, in effect on the date of this contract.

50. LABORATORY SITE ACCESS AND/OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS
(ISU APR 2009)

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

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

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

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

51. EXPORT CONTROLS (ISU APR 2009)

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 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.

52. REPORTS (ISU APR 2009)

The contractor shall furnish intermediate reports to the Laboratory from time to time when requested, in such form and number as may be required by the Laboratory, summarizing activities 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.

53. COMPLIANCE WITH LAW (ISU APR 2009)

Except as otherwise directed by the Laboratory, the contractor shall procure all necessary permits or licenses 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.

54. ENVIRONMENTAL PROTECTION (ISU APR 2009)

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.

55. ENVIRONMENT, SAFETY AND HEALTH (ISU APR 2009)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of Ames Laboratory, DOE, and contractor employees and of members of the public and to protect the environment. This includes compliance with all the applicable Environment, Safety and Health (ES&H) regulations and requirements, including reporting requirements of DOE as identified by the Laboratory in writing from time to time. The regulations and requirements include Title 29 of the Code of Federal Regulations (CFR) including but not limited to parts 1910 and 1926, Title 40 CFR, Protection of Environment, 49 CFR, Transportation, and 10 CFR 851 Workers Safety and Health Program as well as other applicable state, federal, and local regulations for construction. The requirements also include the National Fire Protection Association (NFPA) 70E, "Standard for Electrical Safety in the Workplace." The contractor shall indemnify and hold the Laboratory, Iowa State University, the Board of Regents – State of Iowa, and the State of Iowa harmless in the event DOE imposes a fine or penalty upon any of them pursuant to a violation of 10 CFR 851, and such fine or penalty arises out of or is connected with the performance of work under this contract by the Contractor, its subcontractors, and/or their agents, representatives, servants or employees. The Laboratory shall notify the contractor, in writing, of any noncompliance with the provisions of this clause and the corrective action to be taken, which may include suspension of employees from the site. DOE, if appropriate, can issue a Notice of Violation which can be accompanied by a fine of \$70,000 per day per citation. After receipt of such notice, the contractor shall immediately take corrective action. In the event the contractor fails to comply with regulations and requirements of this clause, the Laboratory may, without prejudice to any other legal and contractual rights of DOE or the Laboratory, issue an order stopping all or any part of the work. The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Laboratory Procurement Official may issue an order stopping work in whole or in part. Any stop work order issued by a Laboratory Procurement Official under this clause (or issued by the contractor to a subcontractor) shall be without prejudice to any other legal or contractual rights of the Government/Laboratory. In the event that the Laboratory Procurement Official issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Laboratory Procurement Official. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause. In the event the Laboratory subsequently issues

an order to the contractor to resume work, the contractor shall make no claim for an extension of time or for compensation for damages by reason of, or in connection with, such work stoppage. The contractor shall assure that all its employees and its subcontractors, including subcontractors hired subsequent to the commencement of on-site activities, are aware of and are following the contractor's approved safety and health program including, but not limited to, the contractor's approved Corporate Safety Plan and approved Job Safety Analysis, as well as all regulations in this clause.

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

A. Reporting Requirements

1. The contractor's supervisor shall call the Construction Management Office by 8:00 AM every day and report his company name, the contract number, and the number of employees, including both his and those of his subcontractor(s), expected on site that day. The phone number is 515-294-7889, unless the Laboratory Project Manager authorizes a different method of communicating the required information.
2. All contractor and subcontractor accidents and unauthorized releases to the environment occurring at the Laboratory site must be reported immediately by dialing 515-294-2153. The accident or unauthorized release must be reported immediately to the Construction Field Representative, Technical Representative or Project Manager. In addition, the contractor shall complete an Incident & Concerns Reporting Form (#10200.088) and submit these to the Construction Field Representative or Project Manager within 24 hours. The types of emergencies that must be reported include but are not limited to: fire, explosion, personnel injury/illness, security incident, vehicle accident, utility failure, possible contamination incident, or a toxic or flammable material spill or release.
3. The contractor shall investigate all Notice of Safety Violations and submit responses to the Construction Field Representative within 24 hours of receipt of the written citation.
4. The contractor is not authorized to dispose of any material on-site unless written approvals are obtained from the Laboratory. This includes but is not limited to the use of garbage and recycling dumpsters, the sinks in buildings, and discharges to the sewer systems. Violations shall be immediately reported to the Construction Field Representative.

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

1. Within ten (10) calendar days after award of the contract, the contractor shall submit its ES&H Program, also referred to as the Corporate Safety Plan (CSP), which contains all programs that are relevant to the contractor's business activities and at a minimum will

contain all highlighted areas of the ES&H Program and Implementation Plan Review Guide (EQO-526), and Implementation Plan encompassing all applicable aspects of Title 29 of the Code of Federal Regulations including Part 1910, “OSHA Safety and Health Standards for General Industry,” Part 1926, “Safety and Health Regulations for Construction,” and 40 CFR, “Protection of Environment”. The contractor is required to comply with the requirements set forth in its plan. The contractor’s ES&H Program and Implementation Plan must be signed by a responsible company officer and as a minimum shall include the provisions set forth below.

- a. A statement of the contractor's ES&H policy;
 - b. The name and qualifications of the contractor's ES&H Representative and alternate and the names of competent persons for excavation, scaffolding, and confined space entry, etc., as required by the scope of work and/or work conditions;
 - c. The frequency of regular safety inspections to be conducted by the contractor;
 - d. The schedule of weekly tool box meetings to be held with contractor employees to emphasize project safety and health, environmental protection, and fire prevention;
 - e. The locations at which the “Worker Protection for DOE Contractor Employees” poster will be posted on the contractor's bulletin board;
 - f. Implementation of all ES&H requirements listed in the contract, including the specifications;
 - g. Employee's right to file a concern with DOE;
 - h. Drug-Free Workplace requirements; and
 - i. Disciplinary policy and procedures.
2. The contractor's ES&H Program and Implementation Plan will be reviewed for compliance with the requirements established above. (A guide for the development of the plan was included in the solicitation documents.) If found to be in compliance, the Laboratory will approve the plan. Otherwise, it will be returned to the contractor with comments on areas not in compliance. A pre-construction meeting will be held, and field work will begin only after the plan is approved. Any revisions subsequent to the initial approval shall be submitted and approved prior to the contractor's implementation of these revisions.



3. The contractor is responsible for reviewing and approving its subcontractors' ES&H Program(s) and Implementation Plan(s) which must comply with the requirements of this contract prior to commencement of work on site, and ensuring compliance during performance of the work.
4. If the contractor has an approved ES&H Program and Implementation Plan on file with the Laboratory, revisions necessary to address new work shall be submitted, reviewed, and approved prior to commencing new work.

C. Job Environmental Protection Planning

To the extent required by the project specifications, a sedimentation and erosion control plan and a storm water pollution prevention plan shall be implemented by the contractor. The requirements are detailed in the project specifications. All modifications to these plans must be approved prior to implementation. If changes are made to the project work scope that affect these plans, the plans shall be updated by the contractor and approved by the Laboratory prior to the revised work scope taking place.

D. Job Safety Analysis (JSA)

1. The contractor must submit within ten (10) calendar days after contract award and have approved, prior to the pre-construction meeting, a job safety analysis which details the specific hazards associated with each phase of the job as well as the mitigating actions the contractor shall take to reduce the risk of injury. Material Safety Data Sheets (MSDSs) for all chemicals used or brought on-site are to be submitted as part of this analysis. (A sample JSA form was provided in the solicitation documents.)
2. Specific procedures in the areas of fall protection, excavation, trenching, confined space, energized electrical work, asbestos abatement, and hoisting and rigging are required as job conditions dictate. Plans to address these activities must be submitted and approved prior to starting work. Names and qualifications of competent persons as defined by OSHA must be submitted for approval a minimum of seven (7) days prior to the start of those activities. Laboratory approval must be obtained prior to starting any job activity requiring an OSHA-defined competent person.
3. The contractor's ES&H representative shall provide a Job Safety Orientation to all contractor and subcontractor employees prior to their starting work. The orientation, as a minimum, shall include a review of the JSA, all related permits and plans, and a review of the emergency numbers, egress routes and assembly points. Each contractor employee shall sign the Job Safety Analysis form to indicate having received the orientation. The signature list shall be submitted to the Laboratory at the end of the first work day and throughout the duration of the contract when signatures are added. (The subjects to be covered by the orientation are listed in the solicitation documents.)



4. The Job Safety Analysis must be formally revised to incorporate changes as required by modifications in work scope during construction. The revisions must be approved prior to the activity taking place. All employees affected by any revisions to the approved JSA shall be notified and advised by the contractor consistent with D.3 (above).
5. For projects lasting more than four (4) months, at the discretion and approval of the Laboratory Project Manager, the submittal of the JSA corresponding to later phases of construction may be deferred. However, no aspect of the work is to proceed unless the applicable JSA has been submitted at least 4 weeks in advance of the work to the Project Manager and reviewed and approved by the Laboratory.

E. Contractor ES&H Representative

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

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

F. Environment, Safety and Health Documentation

The contractor shall submit the following documents, current certificates, etc. as required:

1. Equipment inspection documentation required by 29 CFR 1926, Subpart N, must be with the equipment and shall be approved by the Laboratory prior to use. This includes, but is



not limited to, personnel lifts, cranes, augers, suspended scaffolds, winches, spreader beams, and lifting devices.

2. If the contractor intends to administer first aid or Cardio Pulmonary Resuscitation (CPR), the contractor must comply with 29 CFR 1926, and supply a list of the names of employees who will administer first aid or CPR, along with current certification. This list shall be part of the Construction Job Safety Analysis.
3. Material Safety Data Sheets (MSDSs) must be maintained by the contractor at the job site. MSDSs for all products and materials brought on site shall be posted on the contractor's bulletin board accessible to all workers on the job site. In addition, all MSDSs must be submitted as part of the Construction Job Safety Analysis.
4. Pressure vessel certificates per 29 CFR 1926.29 must be submitted and approved prior to use.
5. Documentation of employee training and/or proof of proficiency required by OSHA and this contract shall be submitted for approval prior to commencement of work. Examples include CPR certifications, confined space training, respirator training, competent persons for excavations and scaffolding, NFPA 70E training for energized electrical work, appropriate asbestos abatement training, and fall protection training.
6. The Contractor shall, without additional expense to the Laboratory, be responsible for obtaining all necessary licenses.

G. Variances

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

H. ES&H Orientation and Site Access

All contractor personnel are to attend ES&H orientation before starting work at the site. The training consists of two parts, Contractor Safety Orientation (CSO) provided by the Laboratory and job specific safety orientation conducted by the contractor.

The CSO lasts approximately one hour. This orientation is required on an annual basis.

I. Equipment and Tool Inspection

All tools and equipment brought on site by contractors and subcontractors will be inspected by the Laboratory for compliance with OSHA and Laboratory requirements prior to use. Tools and

equipment also will be randomly inspected throughout the duration of the contract. Items found out of compliance shall be removed immediately from service, tagged out of service and taken off site by the contractor by the end of that work shift.

J. Laboratory Site Rules

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

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

K. Laboratory Site ES&H Requirements

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

1. The Laboratory conducts work through the use of on-site permits. All required permits will be identified to the contractor and the Laboratory will arrange for all necessary permits. There is no cost to the contractor for any Laboratory permits and no work activity shall be performed without the required permits. Such permits include work entry, energized electrical work, open flame, confined space entry, digging, concrete coring, using powder actuated tools, and removing asbestos. The contractor shall comply with all restrictions or provisions listed on the permits. A permit to bring radioactive sources or x-ray equipment on site must be approved in advance. All coring and penetrating equipment shall be properly grounded.
2. All employees shall wear safety glasses with rigid side shields at all times in the construction work area unless a higher level of eye protection is required for special hazards. All eye protection must meet the requirement of 29 CFR 1926.102. Safety glasses must be ANSI approved and be marked with the ANSI marking "Z87.1" designation.



3. Hard hats shall be worn at all times in the construction work area. Hard hats shall meet the ANSI Z89.1 standard as defined by 29 CFR 1926.100 and bear the “Z89-1” designation. High voltage exposure work requires hard hats and shall meet ANSI Z89.2 standards and bear the “Z89.2” designation.
4. All employees shall wear clothing suitable for the work and weather conditions. The minimum shall be short (1/4 length) sleeve shirt, long trousers, and hard sole leather work boots providing ankle protection. In addition, any work that presents a greater hazard to the feet or toes requires the use of steel toes or metatarsal guards. Canvas, tennis, or deck shoes are not permitted within the construction work area.
5. Ground fault circuit interrupters must be provided for electric hand tools and portable generators. The assured equipment grounding program is not an acceptable alternative.
6. All vehicles and mobile powered equipment, except automobiles and pickup trucks, must have backup alarms.
7. Personnel lifts must be equipped with audible motion alarms for movement in any direction. All lifts must be equipped with a safety foot pedal, or other type of interlock to restrict movement.
8. If required by the equipment manufacturer, roll over protection structures shall be provided. Any modifications to lifting and hoisting equipment must be approved by the equipment manufacture.
9. Emergency egress routes must be kept clear at all times, including doors, corridors, work site, and staging areas.
10. No alarms, safety devices, etc. will be disabled without Laboratory approval.
11. The following lockout/tag-out procedures shall be enforced: Ames personnel responsible for the equipment or utility will de-energize systems and initiate lockout/tag-out. Contractor personnel must be trained in lockout/tag-out prior to participating in lockout/tag-out of hazardous energy sources and working on lockout/tag-out systems or equipment. Contractors must verify that the energy source is de-energized before starting work on the system. Contractor employees must apply their lock and tags to energy control devices.
12. Fire watches shall be maintained during and for a minimum of thirty minutes after burning, welding, or other fire or spark generating work is completed as determined by the Laboratory Fire Inspector. An open flame permit must be issued by the Laboratory prior to any welding/cutting operations and it must be posted at the work site in a conspicuous area at all times and all restrictions followed. Open burning, fire barrels, or other open-flame heating devices having exposed fuel below the flame are prohibited.



Flash back preventers are required on oxygen/fuel hoses. Spark arresters shall be provided on all smoke stacks permitting live sparks or hot material to escape.

13. A “multi-purpose” Class A-B-C dry chemical fire extinguisher, ten pound (minimum) with a pressure gauge and current inspection (within last 12 months), shall be on the construction site within 100 feet of the work area. An additional extinguisher is required for each open flame operation.
14. Contractors shall hold and document the following meetings:
 - a. Weekly “Tool Box” meeting (5-15 minutes) for all contractor and subcontractor employees at the site to discuss pertinent safety topics.
 - b. Meeting minutes or discussion topics must be posted on the contractor's bulletin board for a period of one month following the meeting. Minutes shall include the date, person holding the meeting, subject covered, and signatures of attendees.
15. The use of explosives is prohibited.
16. Vehicle operators must have an appropriate valid driver's license when operating vehicles on site.
17. Portable metal ladders are prohibited.
18. The contractor's competent person performing the daily inspections required by OSHA, such as trench and excavation, ladder, and scaffold inspections, shall document each inspection. Such documentation shall be signed and include the date, time, and conditions found. Documentation shall be available for review by the Laboratory for the duration of the project.
19. The Laboratory has a scaffolding tagging system in place and therefore, will inspect for approval all scaffolds built by the contractor prior to use. No scaffolding shall be used without the Laboratory approval. The contractor must assign a trained and qualified competent person.
20. Respiratory Protection

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

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

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

L. Disciplinary Program

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

The Laboratory will issue verbal warnings to contractors and subcontractors for safety infractions and will issue documented safety violations (Notice of Safety Violation – PFS-530) for more serious or continual infractions. The following progressive program will be implemented in sequential stages based on the quantity of documented safety violations. The previous one year period from the current date will be utilized in determining the quantity of:

1. Stage 1 (Verbal Notification)

When a contractor employee is observed to be involved in a safety infraction which is not imminent danger, the employee shall be told of the infraction and the contractor's ES&H representative will be notified of the incident.

2. Stage 2 (First Documented Safety Violation)

After receiving verbal notification, if a contractor employee is observed to be involved in the same safety infraction, or an infraction which the employee should be cognizant of through his work qualifications, the contractor employee will receive a documented safety violation and the contractor's ES&H representative will receive a copy of the violation.

3. Stage 3 (Second Documented Safety Violation)

Upon receipt of a second documented safety violation, notifications as stated in Stage 2 above shall be completed. In addition, the contractor shall contact the Laboratory to discuss the nature of the violations and the contractor's corrective actions needed to avoid repeated unsafe work practices and the consequences thereof.

4. Stage 4 (Third Documented Safety Violation)

Upon receipt of a third documented safety violation the contractor employee's access to the Laboratory will be suspended for three working days. The contractor's management will be notified of this suspension by the Laboratory's Procurement office. Prior to returning to work at the Laboratory, contractor management and the contractor employee may be required to attend a meeting with Laboratory representatives prior to the employee being permitted access to the Laboratory.

5. Stage 5 (Subsequent Safety Violations)

A subsequent documented safety violation of any nature will be cause to suspend the contractor employee for two weeks. Additional safety violations will be cause for further suspension. Notification and conditions for granting return access to the Laboratory will be as described in Stage 4 above.

6. Imminent Danger

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

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

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

8. Cost to the Laboratory

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

9. Bid List Removal and Disqualification

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

M. Drug-Free Workplace

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

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

56. LIMITATIONS PERIOD (ISU APR 2009)

Any action brought by the contractor for breach of contract, request for equitable adjustment, or any other claim arising under the contract must be identified in writing to the Laboratory Procurement Official. Such written notification must be received by the Laboratory Procurement Official within two (2) years (unless an earlier period is 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.

57. INDEMNIFICATION (ISU APR 2009)

Except as otherwise provided, the Contractor shall indemnify 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.

58. INSURANCE (ISU APR 2009)

(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>	
GENERAL LIABILITY <input checked="" type="checkbox"/> Commercial General Liability <input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurring General Aggregate Limit Applies Per: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> Log	EACH OCCURRENCE	
		\$1,000,000
	Fire Damage	\$ 100,000
	Med Expense	\$ 50,000
	Personal & Adv Injury	\$1,000,000
	General Aggregate	\$1,000,000
	Products – COMP/OP AGG	\$1,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> Any Auto	COMBINED SINGLE LIMIT	
		\$1,000,000
EXCESS LIABILITY <input checked="" type="checkbox"/> Occurring <input type="checkbox"/> Claims Made	EACH OCCURRENCE AGGREGATE	
		\$1,000,000
WORKMAN’S COMPENSATION AND EMPLOYMENT LIABILITY	WC STATUTORY LIMITS	OTHER

	E.L. EACH ACCIDENT	\$500,000
	E.L. DISEASE EA EMPLOYEE	\$500,000
	E.L. DISEASE-POLICY LIMIT	\$500,000

- (b) All policies shall provide by appropriate language that Ames Laboratory, Iowa State University and the United States Government are additional insureds, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution from other insurers of Ames Laboratory, Iowa State University and the United States Government are waived.
- (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.

59. SUBCONTRACTS (ISU APR 2009)

- (a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to 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 Regulation (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.

60. ASSIGNMENT (ISU APR 2009)

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

61. APPLICABLE LAW (ISU APR 2009)

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

62. INTEGRATION CLAUSE (ISU APR 2009)

This contract represents the full understanding of the parties and is the entire agreement between the parties. All negotiations between the parties have been merged into the contract, and there are no understandings or agreements other than those incorporated into this contract. Any discrepancy, inconsistency, or conflict between one or more of the documents comprising this contract which can be reasonably ascertained by the contractor shall be immediately submitted to the Laboratory for its written decision. Any work undertaken by the contractor without such decision shall be at the contractor's own risk.

63. NON-WAIVER OF DEFAULTS (ISU APR 2009)

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.

64. SUSPECT COUNTERFEIT PARTS (DOE G 414.1-3 NOV 2004)

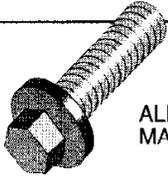
Notwithstanding any other provisions of this agreement, the contractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the Laboratory. Contractor further warrants that all items used by the contractor during the performance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

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



ATTACHMENT I TO SUSPECT/COUNTERFEIT PARTS CLAUSE

SUSPECT/COUNTERFEIT PART



HEADMARK LIST

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



Grade 5



Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:



MARK	MANUFACTURER
J	Jinn Her (TW)



MARK	MANUFACTURER
KS	Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:

MARK	MANUFACTURER	MARK	MANUFACTURER
	A Asahi Mfg. (JP)		KS Kosaka Kogyo (JP)
	NF Nippon Fasteners (JP)		RT Takai Ltd (JP)
	H Hinomoto Metal (JP)		FM Fastener Co of Japan (JP)
	M Minamida Sieybo (JP)		KY Kyoei Mfg (JP)
	MS Minato Kogyo (JP)		J Jinn Her (TW)
	Hollow Triangle Infasco (CA TW JP YU) (Greater than 1/2 inch dia)		
	E Daiei (JP)		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:

	MARK	MANUFACTURER
Type 1		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 (SEE: <http://www.saftek.com/worksafe/bull82.txt>)