

APPENDIX A ARGONNE TERMS AND CONDITIONS

(For Non-Commercial Awards Of \$10,000 And Over)

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1. ACCEPTANCE (OCT 1999)

Acceptance of this Purchase Order (hereinafter called the “contract”) must be in accordance with and strictly limited to the Terms and Conditions contained herein. An attempted acknowledgement or acceptance which contains provisions conflicting or additional to the Terms and Conditions herein set forth or which varies any term or condition shall have no force or effect. Performance by the contractor without an effective acknowledgement shall be performance in accordance with the Terms and Conditions of this contract.

2. PAYMENTS (FEB 2004)

(a) The Laboratory shall pay the contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Laboratory if:

- (1) The amount due on the deliveries warrants it; or
- (2) The contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(b) Property.

- (1) Property shall mean all tangible personal property as identified in ANL Form PD-150, Control of Government Property – Contractor Requirements, in the section entitled, “IDENTIFICATION” that has been purchased by the contractor in the performance of the contract for which cost the contractor is entitled to be reimbursed as a direct item of cost under this contract or for which the contractor has included the cost for such property in the fixed price charged to the Laboratory.
- (2) All INVOICES submitted under contracts which contain ANL Form PD-150, Control of Government Property – Contractor Requirements, shall be accompanied by the completed form entitled, Argonne National Laboratory Subcontract Property Management Government Property Acquisition Record, ANL-661.

THE LABORATORY WILL NOT ISSUE PAYMENT UNLESS A COMPLETED FORM ANL-661 IS INCLUDED WITH ALL INVOICES (REGARDLESS IF PROPERTY IS BEING INVOICED ON A PARTICULAR INVOICE OR NOT.)

3. BANKRUPTCY (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 for all Laboratory contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

4. DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Applicability.

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

(b) 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

(c) 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.

(d) 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.

5. COVENANT AGAINST CONTINGENT FEES (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.

6. EQUAL OPPORTUNITY (APR 2002)

- (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) 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 paragraphs (b)(1) through (b)(11) of 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.
 - (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 paragraphs (b)(1) through (11) 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.

7. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

- (a) 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 number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the contractor during the period covered by the report.
- (b) The contractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans” Employment Report (VETS-100 Report)”.
- (c) The contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. 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).
- (e) The contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the contractor. The invitation shall state that—
- (1) The information is voluntarily provided;
 - (2) The information will be kept confidential;
 - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 - (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) The contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

8. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

This clause applies to all contracts and subcontracts for personal property and nonpersonal services (including construction) of \$25,000 or more except as waived by the Secretary of Labor. The requirements of the clause, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in any contract with a State or local government (or any agency, instrumentality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract. The clause requires submission of the VETS-100 Report in all cases where the contractor or subcontractor has received an award of \$25,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

- (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) 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;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) 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;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. 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 special 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.

Special disabled veteran means—

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
 - (i) Rated at 30 percent or more; or
 - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant

impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

- (2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who—

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
 - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—
 - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General.

- (1) The contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible 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 special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status 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) 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; and
 - (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).
- (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 U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
 - (2) The contractor shall make the listing of employment openings with the local employment service office 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 public employment agency 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 special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
 - (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Laboratory Procurement Official.
 - (3) The contractor shall ensure that applicants or employees who are special 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 special disabled veterans, veterans of the Vietnam era, and other eligible 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 issued pursuant to the Act.
- (g) Subcontracts. The contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 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.

9. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

- (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 \$10,000 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.

10. CLEAN AIR AND WATER (APR 1984)

- (a) “Air Act,” as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.). “Clean air standards,” as used in this clause, means:
 - (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
 - (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
 - (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
 - (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412 (d)).

“Clean water standards,” as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

“Compliance,” as used in this clause, means compliance with:

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

“Facility,” as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collected in one geographical area.

“Water Act,” as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

- (b) The contractor agrees:
 - (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
 - (2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
 - (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
 - (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

11. TOXIC CHEMICAL RELEASE REPORTING (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 the following Standard Industrial Classification Code (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, or 5171, or 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.

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

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

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

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(Fly America-Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) If available, the contractor, in performing work under this contract, shall use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property.
- (d) In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

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

[State reasons]:

(End of Statement)

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

13. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 2003)

- (a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
- (1) Acquired for a U.S. Government agency account;
 - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
 - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c) (1) The contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
- (i) The Authorized Laboratory Procurement Official, and
 - (ii) The: Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590

Subcontractor bills of lading shall be submitted through the prime contractor.

- (2) The contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) The contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).
- (e) The requirement in paragraph (a) does not apply to—
- (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (4) Subcontracts or purchase orders for the acquisition of commercial items unless—
 - (i) This contract is—
 - (A) A contract or agreement for ocean transportation services; or
 - (B) A construction contract; or
 - (ii) The supplies being transported are—
 - (A) Items the contractor is reselling or distributing to the Government without adding value. (Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
 - (B) Shipped in direct support of U.S. military—
 - (1) Contingency operations;
 - (2) Exercises; or

- (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

14. APPLICABLE LAW (OCT 1999)

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

15. UTILIZATION OF SMALL BUSINESS CONCERNS (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 database maintained by the Small Business Administration (PRO-Net).

“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.

16. NOTICE TO THE LABORATORY OF LABOR DISPUTES (OCT 1999)

- (a) 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.
- (b) The contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the contractor, as the case may be, of all relevant information concerning the dispute.

17. REPORTS (OCT 1999)

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.

18. CHANGES - FIXED-PRICE (OCT 1999)

- (a) The authorized Laboratory Procurement Official 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) 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.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
 - (4) Description of services to be performed.

- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the authorized Laboratory Procurement Official shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the authorized Laboratory Procurement Official decides that the facts justify it, the authorized Laboratory Procurement Official may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the contractor's proposal includes the cost of the property made obsolete or excess by the change, the authorized Laboratory Procurement Official shall have the right to prescribe the manner of the disposition of the property.
- (e) Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

19. EXTRAS (OCT 1999)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the authorized Laboratory Procurement Official.

20. WARRANTY OF SERVICES (MAY 2001)

- (a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Laboratory by which the Laboratory assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.
- (b) Notwithstanding inspection and acceptance by the Laboratory or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Laboratory Procurement Official shall give written notice of any defect or nonconformance to the Contractor...*[Laboratory Procurement Official shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "within 30 days from the date of acceptance by the Laboratory,"; within 1000 hours of use by the Laboratory;" or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time]*. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Laboratory does not require correction or reperformance.

- (c) If the Contractor is required to correct or reperform, it shall be at no cost to the Laboratory and any services corrected or reperfomed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Laboratory Procurement Official may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Laboratory thereby, or make an equitable adjustment in the contract price.
- (d) If the Laboratory does not require correction or reperformance, the Laboratory Procurement Official shall make an equitable adjustment in the contract price.

21. RESPONSIBILITY FOR SUPPLIES (OCT 1999)

- (a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance by the Laboratory, regardless of when or where the Laboratory takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the Laboratory upon:
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Acceptance by the Laboratory or delivery of the supplies to the Laboratory at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.
- (d) Under paragraph (b) above, the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Laboratory acting within the scope of their employment.

22. INSPECTION OF SERVICES (AUG 1996)

- (a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Laboratory covering the 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 has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Laboratory shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Laboratory performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Laboratory may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Laboratory may --
 - (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and
 - (2) reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Laboratory may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Laboratory that is directly related to the performance of such service or (2) terminate the contract for default.

23. PERMITS OR LICENSES (OCT 1999)

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

24. ASSIGNMENT AND SUBCONTRACTING (OCT 1999)

- (a) 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.
- (b) The contractor shall not subcontract any portion of the work hereunder without the prior written approval of the Laboratory. When requesting such approval, the contractor shall furnish the Laboratory with the name of the proposed subcontractor, a description of the work proposed to be subcontracted, and such other information as the Laboratory shall require.

25. SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2004)

- (a) Definitions, as used in this clause --

“Commercial item,” means any item, other than real property, that is of a type customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public; or has been offered for sale, lease, or license to the general public.

“Subcontract,” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The contractor shall insert the following clauses in subcontracts for commercial items:
- (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include the clause 52.219-8 “Utilization of Small Business Concerns” in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a)).
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C.793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flowdown required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

26. LABORATORY-FURNISHED PROPERTY (OCT 1999)

- (a) The Laboratory shall deliver to the contractor, at the time and locations stated in this contract, the Laboratory-furnished property described in this contract. If that property, suitable for its intended use, is not delivered to the contractor, the Laboratory shall equitably adjust affected provisions of this contract in accordance with the Changes clause when:
 - (1) The contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to Laboratory-furnished property shall remain in the Government. The contractor shall use the Laboratory-furnished property only in connection with this contract. The contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Laboratory inspection at all reasonable times.
- (c) Upon delivery of Laboratory-furnished property to the contractor, the contractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear; or
 - (2) To the extent property is consumed in performing this contract.
- (d) Upon completing this contract, the contractor shall follow the instructions of the Laboratory regarding the disposition of all Laboratory-furnished property not consumed in performing this contract or previously delivered to the Laboratory. The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Laboratory. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Laboratory as directed by the Laboratory.
- (e) If this contract is to be performed outside the United States of America, its territories, or possessions, the word "Government" (wherever it appears in this clause) shall be construed as "United States Government."

27. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEP 2000)

- (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. 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 paying 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 Procurement Official 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 Procurement Official 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 exceeding \$100,000 and require subcontractors to include these provisions in any 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.

28. WALSH-HEALEY PUBLIC CONTRACTS ACT (OCT 1999)

Except as otherwise may be approved, in writing, by the Laboratory Procurement Official, the contractor agrees to insert the following provision in 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 there under 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.

29. BUY AMERICAN ACT -- SUPPLIES (JUN 2003)

(a) Definitions. As used in this clause –

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

“Cost of components” means -

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

“Domestic end product” means-

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

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

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

- (c) Offerors may obtain from the Laboratory Procurement Official a list of foreign articles that the Laboratory Procurement Official will treat as domestic for this contract.
- (d) The contractor shall use only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

30. FEDERAL, STATE, AND LOCAL TAXES (OCT 1999)

- (a) “Contract date” as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“All applicable Federal, State, and local taxes and duties,” as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

“After-imposed Federal tax,” as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

“After-relieved Federal tax,” as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

- (b) The contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor’s fault, negligence, or failure to follow instructions of the Laboratory.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$100.

- (g) The contractor shall promptly notify the Laboratory of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Laboratory directs.
- (h) The Laboratory shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the contractor requests such evidence and a reasonable basis exists to sustain the exemption.

31. TERMINATION FOR CONVENIENCE OF THE LABORATORY (OCT 1999)

The Laboratory, by written notice, may terminate this contract, in whole or in part, when it is in the Laboratory's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

32. DEFAULT (OCT 1999)

- (a) (1) The Laboratory may, subject to paragraphs (c) and (d) below, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
 - (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).
- (2) The Laboratory's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the contractor does not cure such failure within 10 days (or more if authorized in writing by the Laboratory) after receipt of the notice from the Laboratory specifying the failure.
- (b) If the Laboratory terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Laboratory considers appropriate, supplies or services similar to those terminated, and the contractor will be liable to the Laboratory for any excess costs for those supplies or services. However, the contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include (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.

- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, the Laboratory may require the contractor to transfer title and deliver to the Laboratory, as directed by the Laboratory, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Laboratory, the contractor shall also protect and preserve property in its possession in which the Laboratory or the Government have an interest.
- (f) The Laboratory shall pay the contract price for completed supplies delivered and accepted. The contractor and the Laboratory shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The Laboratory may withhold from these amounts any sum the Laboratory determines to be necessary to protect the Laboratory against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the contractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Laboratory.
- (h) The rights and remedies of the Laboratory in this clause are in addition to any other rights and remedies provided by law or under this contract.

33. ANTI-KICKBACK PROCEDURES (JULY 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.

34. RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

- (a) Except as provided in paragraph (b) below, the contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in paragraph (a) above 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 \$100,000.

35. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 1999)

This clause applies if this contract is expected to exceed \$100,000.

- (a) Definitions

“Agency” as used in this clause, means executive agency as defined in 2.101.

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

- (1) The awarding of any Federal contract
- (2) The making of any Federal grant
- (3) The making of any Federal loan
- (4) The entering into of any cooperative agreement

- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

“Indian tribe” and “tribal organization,” as used in this clause, 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,” as used in this clause, 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,” as used in this clause, 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,” as used in this clause, 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,” as used in this clause, 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,” as used in this clause, 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,” as used in this clause, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this clause, 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 one hundred thirty (130) working days within one (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 one hundred thirty (130) working days within one (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 one hundred thirty (130) working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions

- (1) Section 1352 of title 31, United States Code, among other things, 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 following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to 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 a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.

- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (B) For purposes of subdivision (b)(3)(I)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its submission; and
 - (3) Capability presentations 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.
 - (E) Only those services expressly authorized by subdivision (b)(3)(I)(A) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:

- (1) 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.
 - (2) 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.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client’s proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (C) 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.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure

- (1) The contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
 - (2) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes:
 - (i) A cumulative increase of twenty-five thousand dollars (\$25,000) or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s) employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
 - (3) The contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding one hundred thousand dollars (\$100,000) under the Federal contract.
 - (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosures to the Laboratory at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (d) Agreement. The contractor agrees not to make any payment prohibited by this clause.

- (e) Penalties.
 - (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) 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.⁴¹

36. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JAN 2004)

- (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, Libya, and Sudan are prohibited, as are most imports from 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.epls.gov/TerList1.html>. 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/ofac>.
- (c) The contractor shall insert this clause, including this paragraph (c), in all subcontracts.

37. SECURITY (MAY 2002)

- (a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or

termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- (b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) Definition of classified information. The term “classified information” means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of restricted data. The term “Restricted Data” means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term “Formerly Restricted Data” means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term “National Security Information” means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM) SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)

(j) Foreign Ownership, Control or Influence.

- (1) The contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Laboratory Procurement Official.
- (2) If a contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the contractor to avoid or mitigate foreign influences.
- (3) If the cognizant security office at any time determines that the contractor is, or is potentially, subject to foreign ownership, control or influence, the contractor shall comply with such instructions as the Laboratory Procurement Official shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Laboratory Procurement Official. For purposes of this clause, the term “contractor” shall mean Subcontractor and the term “contract” shall mean subcontract.
- (5) The Laboratory may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause or if the contractor creates a FOCI situation in order to avoid performance or a termination for default. The Laboratory may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

38. LABORATORY SITE ACCESS AND /OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (DEC 2004)

Site Access

Site access, including cyber access utilizing a Laboratory account, by all non-U.S. citizens must be reviewed and approved by the Laboratory Director or his designee. All new requests must be submitted on Form ANL-593. Non-U.S. citizens are 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 ANL 593 should be submitted as far in advance as possible (a minimum of 30 days for a sensitive assignment, 7 days for a non-sensitive country assignment or visit or sensitive visit.)

For assignments (more than 30 days) involving a foreign national from a “Sensitive Country”, and/or access to a security area of the Laboratory or access to a sensitive subject, at least 30 days advance notice should be provided to ensure that Security, Counterintelligence, and Export Control reviews can be accomplished, and a DOE indices check can be completed prior to approval. In such cases, a specific security plan is required to be submitted to the Foreign Visits and Assignments Office with the ANL-593 form requesting the visit by the Hosting Division. An indices check normally takes 30 days after completion of all required pre-clearance documents, but can take considerably longer (once obtained, an indices check is valid for two years).

For visits or assignments involving a foreign national from a “Terrorist Supporting Country”, (which currently include: Cuba, Iran, Libya, 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 ANL Technical Investigator associated with your activity.

Activity Participation

Due to Department of Energy directives and Department of Commerce regulations, persons who are born in (and who are not naturalized U. S. Citizens) or are citizens of any “Terrorist Supporting Country” may be denied access and/or participation in activities with Argonne National Laboratory.

The requirement is to be flowed-down to all subcontractors at any tier.

39. EXPORT LICENSE AGREEMENT (AUG 2002)

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, if significant details are revealed. 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. Contractor shall be solely liable for any violation of export control statutes or regulations, and shall indemnify and hold the Department of Energy, The University of Chicago, and the Laboratory harmless from any liability that may arise for any such violation.

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

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

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

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

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

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

To further ensure that you do not run the risk of exporting sensitive information or technology when traveling abroad, keep the following guidelines in mind that without having acquired an export license prior to your trip, presentations and discussions must be limited to only those topics that are not on the DOE Sensitive Subjects List and the ANL Sensitive Technologies and not related to controlled items or technologies unless they are in the public domain. Further elaboration, or additional details, may be considered an export of technologies and need an export license prior to release.

41. ENVIRONMENTAL PROTECTION (OCT 1999)

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

42. WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

- (a) The contractor shall comply with the requirements of the “DOE Contractor Employee Protection Program” at 10CFR 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.

43. VEHICLE LIABILITY INSURANCE COVERAGE (OCT 1999)

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

44. INTEGRATION CLAUSE (OCT 1999)

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.

45. PROHIBITION OF SEGREGATED FACILITIES (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.

46. ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)

- (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 Laboratory 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 the Laboratory 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 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 Laboratory audit agency through the Laboratory Procurement Official.
- (d) Disposition of records. Except as agreed upon by the Laboratory 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 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 this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Laboratory and the contractor.
- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning work under this contract as the Laboratory Procurement Official 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 (i) 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 General Accounting Office of any transaction under this contract.
- (i) Internal audit. (*This paragraph (i) only applies to subcontracts estimated to exceed \$5 million with a performance period greater than 2 years.*) The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Laboratory Procurement Official.

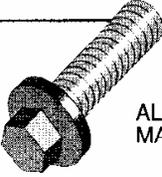
47. SUSPECT/COUNTERFEIT PARTS (OCT 1999)

- (a) “Suspect/Counterfeit Parts” are parts that may be of new manufacture, but labeled to represent a different class of parts, or used and /or refurbished parts, complete with false labeling, that are represented as new parts. Three categories of suspect/counterfeit parts exist:
 - (1) Fasteners, including bolts and nuts, made of carbon steel (designated as grade five or grade eight) or stainless steel, with headmarks or stamps shown on the headmark list that was prepared by the United States Customs Service (see Attachment I to this clause, or its latest revision);
 - (2) Piping valves and flanges bearing labels that falsely indicate that the items meet recognized ASME or ASTM consensus standards; and,
 - (3) Used or refurbished molded-case electrical circuit breakers or similar type switch gear.

- (b) Supplies furnished to the Laboratory under this contract shall not include suspect/counterfeit parts nor shall such parts be used in performing any work under this contract whether on or off the Laboratory site.
- (c) If suspect/counterfeit parts are furnished under this contract and are found on the Laboratory site, such parts shall be impounded by the Laboratory or they shall be removed by the contractor as directed by the Laboratory. The contractor shall promptly replace such parts with supplies acceptable to the Laboratory and the contractor shall be liable for all costs relating to impoundment, removal, and replacement.
- (d) The rights of the Laboratory in this clause are in addition to any other rights provided by law or under this contract.

SUSPECT/COUNTERFEIT PART

HEADMARK LIST



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



Grade 5



Grade 8

GRADE 5 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:



MARK

MANUFACTURER

J

Jinn Her (TW)



MARK

MANUFACTURER

KS

Kosaka Kogyo (JP)

GRADE 8 FASTENERS WITH THE FOLLOWING MANUFACTURERS' HEADMARKS:



MARK

MANUFACTURER

A

Asahi Mfg. (JP)



MARK

MANUFACTURER

KS

Kosaka Kogyo (JP)



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:

Type 1



MARK MANUFACTURER

A325 KS

Kosaka Kogyo (JP)

Type 2



Type 3



Headmarkings are usually raised – sometimes indented.

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



ANY BOLT ON THIS LIST SHOULD BE TREATED AS DEFECTIVE WITHOUT FURTHER TESTING.

OR, IF YOU SEE ANY INDICATION THAT A CIRCUIT BREAKER MAY BE USED OR REFURBISHED (SEE BULLETIN, NO. DOE/EH-0266)