

This purchase order incorporates the following articles by reference. The revision of each article will be the one in effect on the date of the solicitation. Titles of articles are provided for reference purposes only and carry no substantive weight.

For purposes of this order, where the article says "Government", change it to read "Buyer"; where the article says "Contracting Officer", change it to read "Contracts Professional"; and where the article says "Contractor" or "Subcontractor", change it to read "Supplier".

Based on the stated provisions, Supplier is to determine what articles must be inserted in its subcontracts to implement its obligations to Buyer (as identified in the order) and the Government and must implement them in its lower-tier subcontracts.

PART I. ARTICLES INCORPORATED BY REFERENCE

The following articles, as applicable, are incorporated by reference (except as noted):

ARTICLE	REFERENCE
CHANGES AND CHANGED CONDITIONS - <i>Delete paragraph (e)</i>	FAR 52.243-5
CLEANING UP	FAR 52.236-12
COMBATING TRAFFICKING IN PERSONS	FAR 52.222-50
DEFAULT (FIXED-PRICE CONSTRUCTION) - <i>Delete reference to Disputes clause in paragraph (b)(2)</i>	FAR 52.249-10
DIFFERING SITE CONDITIONS	FAR 52.236-2
EMPLOYEE ELIGIBILITY VERIFICATION	FAR 52.222-54
ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS	FAR 52.223-15
EQUAL OPPORTUNITY	FAR 52.222-26
GOVERNMENT PROPERTY (with Alt I) <ul style="list-style-type: none"> • <i>Alternate I does not apply to fixed-price purchase orders awarded on the basis of submission of certified cost or pricing data, cost-reimbursement, time-and-material, or labor-hour orders</i> • <i>The preamble of these provisions does not apply to this article; rather where the article says "Contractor", change it to read "Supplier"; where the article says "subcontractor", change it to read "sub-tier Supplier"; where the article says "contract", change it to read "purchase order"; where the article says "Contracting Officer", change it to read "Contracts Professional"</i> 	FAR 52.245-1
INSPECTION OF CONSTRUCTION	FAR 52.246-12
INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION	DEAR 970.5223-1
LAWS, REGULATIONS, AND DOE DIRECTIVES	DEAR 970.5204-2
LAYOUT OF WORK	FAR 52.236-17
MATERIALS AND WORKMANSHIP	FAR 52.236-5
OPERATIONS AND STORAGE AREAS	FAR 52.236-10
OTHER CONTRACTS	FAR 52.236-8
PERFORMANCE AND PAYMENT BONDS – CONSTRUCTION	FAR 52.228-15
PERMITS AND RESPONSIBILITIES	FAR 52.236-7
PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	FAR 52.204-9
PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FAR 52.247-64
PREFERENCE FOR U.S.-FLAG AIR CARRIERS	FAR 52.247-63
PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS	DEAR 952.223-75
PROHIBITION OF SEGREGATED FACILITIES	FAR 52.222-21
PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS	FAR 52.203-19
PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	FAR 52.236-9
PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONCERNS	FAR 52.232-40
RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FAR 52.225-13
RIGHTS IN DATA - GENERAL (with Alt V) - <i>Substitute paragraphs (a) and (d)(3) from DEAR reference</i>	FAR 52.227-14 DEAR 927.409 (a)(1)
SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK	FAR 52.236-3
SPECIFICATIONS AND DRAWINGS – FOR CONSTRUCTION	FAR 52.236-21
SUBCONTRACTS FOR COMMERCIAL ITEMS	FAR 52.244-6
SUPERINTENDENCE BY THE SUBCONTRACTOR	FAR 52.236-6

ARTICLE	REFERENCE
SUSPENSION OF WORK	FAR 52.242-14
USE AND POSSESSION PRIOR TO COMPLETION	FAR 52.236-11
UTILIZATION OF SMALL BUSINESS CONCERNS	FAR 52.219-8
WARRANTY OF CONSTRUCTION	FAR 52.246-21

PART II. ARTICLES INCORPORATED BY REFERENCE AT VARIOUS THRESHOLDS

The following articles, as applicable, are incorporated by reference (except as noted):

THRESHOLD	ARTICLE	REFERENCE
Less than \$150,000	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM)	FAR 52.249-1
Greater than \$2,000	APPRENTICES AND TRAINEES	FAR 52.222-9
	CERTIFICATION OF ELIGIBILITY	FAR 52.222-15
	COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND REQUIREMENTS	FAR 52.222-13
	COMPLIANCE WITH COPELAND ACT REQUIREMENTS	FAR 52.222-10
	CONSTRUCTION WAGE RATE REQUIREMENTS	FAR 52.222-6
	CONTRACT TERMINATION - DEBARMENT	FAR 52.222-12
	DISPUTES CONCERNING LABOR STANDARDS	FAR 52.222-14
	PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706	FAR 52.222-62
	PAYROLLS AND BASIC RECORDS	FAR 52.222-8
	SUBCONTRACT (LABOR STANDARDS)	FAR 52.222-11
	WITHHOLDING OF FUNDS	FAR 52.222-7
Greater than \$3,500	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING	FAR 52.223-18
Greater than \$10,000	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION	FAR 52.222-27
	NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY FOR CONSTRUCTION	FAR 52.222-23
	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT	FAR 52.222-40
Greater than \$30,000	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS	FAR 52.204-10
Greater than \$35,000	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	FAR 52.209-6
Greater than \$100,000	AUTHORIZATION AND CONSENT	FAR 52.227-1
Greater than \$150,000	ANTI-KICKBACK PROCEDURES	FAR 52.203-7
	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION	FAR 52.222-4
	EMPLOYMENT REPORTS ON VETERANS	FAR 52.222-37
	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	FAR 52.203-12
Greater than \$250,000	AUDIT AND RECORDS-NEGOTIATION	FAR 52.215-2
	BANKRUPTCY	FAR 52.242-13
	CHANGES	FAR 52.243-4
	CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS	FAR 52.203-17
	DEFINITIONS	FAR 52.202-1
	DUTY FREE ENTRY	FAR 52.225-8
	FEDERAL, STATE AND LOCAL TAXES	FAR 52.229-3

THRESHOLD	ARTICLE	REFERENCE
Greater than \$250,000	GRATUITIES	FAR 52.203-3
	INSURANCE - WORK ON A GOVERNMENT INSTALLATION	FAR 52.228-5
	PREVENTING PERSONAL CONFLICTS OF INTEREST	FAR 52.203-16
	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	FAR 52.203-6
	SUSTAINABLE ACQUISITION PROGRAM	DEAR 952.223-78
	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (with Alt I) - <i>Delete reference to Disputes clause in paragraph (j)</i>	FAR 52.249-2
Greater than \$500,000	DISPLACED EMPLOYEE HIRING PREFERENCE	DEAR 952.226-74
	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FY1993	DEAR 970.5226-2
Greater than \$1,500,000	SMALL BUSINESS SUBCONTRACTING PLAN (with Alt II)	FAR 52.219-9
Greater than \$2,000,000	NOTIFICATION OF OWNERSHIP CHANGES	FAR 52.215-19
	PENSION ADJUSTMENTS AND ASSET REVERSIONS	FAR 52.215-15
	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA	FAR 52.215-10
	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS	FAR 52.215-18
	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA	FAR 52.215-12
Greater than \$5,500,000	CONTRACTOR CODE OF BUSINESS ETHICS	FAR 52.203-13
	DISPLAY OF HOTLINE POSTER(S)	FAR 52.203-14

PART III. ARTICLES INCORPORATED IN FULL TEXT

The following articles, as applicable, are incorporated by full text:

PUBLIC RELEASE OF INFORMATION

Information, data, photographs, sketches, advertising, displays, promotional brochures, or other materials related to work under this order, which Supplier desires to publish, display, or release internally, to other contractors, to government agencies, or to the public, shall be submitted to the Buyer for approval at least eight weeks prior to the desired printing or release date. This includes descriptive or promotional material which links or relates, directly or indirectly, Supplier's product line, manufacturing facilities, or manufacturing capabilities to performance of naval nuclear propulsion work. As part of the approval request, Supplier shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier of supplier, must have the prior approval of Buyer.

Should any information described above be requested, subpoenaed, or otherwise sought by a court or other judicial or administrative authority, this should be promptly brought to the attention of Buyer to permit appropriate measures to be taken to protect the information. Under no circumstances should this information be released to such authority without prior notification and agreement of the Buyer.

Supplier agrees that this requirement of prior Buyer approval of any release shall survive the purchase order and that Supplier shall not for a period of twenty years after issuance of this purchase order, either directly or indirectly issue any such release without requisite approval of Buyer, its successor or assignee.

Supplier shall include all provisions of this article including this sentence in all lower tier contracts under this order.

APPROVALS

Notwithstanding the Suspension of Work clause (FAR 52.242-14) and with respect to any requirements of this purchase order that the Supplier obtain the approval of Buyer, in the event that Buyer, within the time specified in the purchase order or if no time is specified, within a reasonable time, fails to either grant the approval requested or to advise Supplier that the request for approval has been denied and if such failure causes an increase in the time required for performance of this purchase order, an equitable adjustment shall be made in the delivery dates set forth in this purchase order and this purchase order shall be amended accordingly. Any claim by the Supplier for an equitable adjustment in the delivery date under this article must be asserted in writing within 15 days after the approval is granted or denied, provided that Buyer, in its sole discretion decides that the facts justify such action, may receive and act upon a claim for adjustment asserted at any time prior to final payment under this purchase order. The adjustment provided for herein is exclusive and any such failure on the part of the Buyer to grant the required approval shall not be the basis for a charge of contract breach, nor for a claim for money damages of any nature whatever.

ASSIGNMENT AND SET OFF

Performance of this order shall not be assigned or transferred by Supplier, except as expressly authorized in writing by Buyer. This order may be assigned by Buyer to the Government or any designee of the Government, provided that written notice thereof is given to Supplier. Buyer shall be entitled at all times to set off against any amount payable at any time by Buyer under this order, any amount owing at any time from Supplier to Buyer whether arising under this order or other contracts or orders with Supplier.

BUY AMERICAN – CONSTRUCTION MATERIALS (MAY 2014) - Applies to orders less than \$6,932,000

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

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
“Component” means an article, material, or supply incorporated directly into a construction material. “Construction material” means an article, material, or supply brought to the construction site by Supplier or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.
“Cost of components” means—
- (3) For components purchased by Supplier, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (4) For components manufactured by Supplier, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item. “Foreign construction material” means a construction material other than a domestic construction material. “United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.*

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

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

- (1) (i) Any Supplier request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—
 - (A) A description of the foreign and domestic construction materials;

- (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Supplier request for a determination submitted after contract award shall explain why Supplier could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If Supplier does not submit a satisfactory explanation, the Contracts Professional need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracts Professional and Supplier negotiate adequate consideration, the Contracts Professional will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
 - (3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.
- (d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, Supplier shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

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

[Include other applicable supporting information.]

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

NOTICE OF BUY AMERICAN REQUIREMENT – CONSTRUCTION MATERIALS (MAY 2014)

- (a) *Definitions*. “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-9).
- (b) *Requests for determinations of inapplicability*. An offeror requesting a determination regarding the inapplicability of the Buy American statute should submit the request to the Contracts Professional in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) *Evaluation of offers*.
 - (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.
 - (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracts Professional will award to the offeror that did not request an exception based on unreasonable cost.
- (d) *Alternate offers*.
 - (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

- (2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—
 - (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
 - (ii) May be accepted if revised during negotiations.

CHOICE OF LAW

This order and any and all matters of disputes between the parties to this order whether arising from the order itself or from alleged extra contractual facts, during or subsequent to the contract shall be governed by construed, and enforced in accordance with the law of U.S. Government contracts as set forth by statute and applicable regulations, and decisions by the appropriate courts and Board of Contract Appeals. To the extent that the law referred to in the foregoing sentence is not determinative on an issue, the issue shall be resolved in accordance with the laws of Idaho or New York or Pennsylvania depending on the state in which the work is performed.

DISPUTES

Supplier shall not be entitled to claim and Buyer shall not be liable to Supplier or its Suppliers or Suppliers of any tier in tort (including negligence), or purchase order except as specifically provided in this purchase order. Any claim arising out of or attributable to the interpretation or performance of this order which cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause. If for any reason Supplier and Buyer are unable to resolve a claim for an adjustment, Supplier or Buyer shall notify the other party in writing that a dispute exists and request or provide a final determination regarding the claim. Any such request by Supplier shall clearly reference this clause and shall summarize the facts in dispute and Supplier's proposed resolution of the dispute.

Buyer shall, within 60 calendar days of any request by Supplier, provide a written final determination setting forth the contractual basis for its decision and defining what purchase order adjustments it considers equitable. Upon Supplier's written acceptance of Buyer's determination the purchase order will be modified and the determination implemented accordingly. If Buyer's final determination is not accepted by Supplier, the matter shall, within 30 calendar days, be referred to senior executives of the parties who shall have designated authority to settle the dispute. The parties shall promptly prepare and exchange memoranda stating the issues in dispute and their respective positions, summarizing the negotiations that have taken place and attaching relevant documents.

The senior executives will meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within 30 days of the commencement of such negotiations, the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (ADR) process which is mutually acceptable to the parties. Should the parties agree to pursue an ADR process each party will be responsible for its own expenses incurred to resolve the dispute during the ADR process. If the parties do not agree to an ADR process or are unable to resolve the dispute through ADR, either party shall then have the right to pursue any legal remedy consistent with other terms of the purchase order. Pending final resolution of any performance issue, request for equitable adjustment, claim or dispute regarding this order, the Supplier shall proceed diligently with the performance of this order.

EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) - Applies to purchase orders greater than \$150,000

- (a) As used in this clause, "Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.
- (b) Supplier shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by Supplier to employ and advance in employment qualified protected veterans.
- (c) Supplier shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. Supplier shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) - Applies to purchase orders greater than \$15,000

- (a) Supplier shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by Supplier to employ and advance in employment qualified individuals with disabilities.
- (b) Supplier shall include the terms of this clause in every subcontract in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. Supplier shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

EXPORT CONTROL

- A. Supplier agrees to comply with all applicable United States export control laws and regulations, specifically the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations 15 C.F.R., including the requirement for obtaining any export license, if applicable.
- B. Supplier agrees that it will not transfer any export controlled item, data, or services, to foreign persons employed by, or associated with, or under purchase order to Supplier or Supplier's lower-tier Suppliers, without the authority of an export license or applicable license exemption. If Supplier determines that an export license is required, Supplier shall notify Buyer prior to applying for said license.
- C. Supplier agrees to notify the Buyer if any deliverable under this purchase order is restricted by export control laws or regulations.
- D. Supplier shall immediately notify the Buyer if Supplier is or becomes listed in any Denied Parties List, or if Supplier's export privileges are otherwise denied, suspended, or revoked in whole or in part by any United States Government entity or agency.
- E. Supplier shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expenses, including attorney's fees, all expense of litigation and/or settlement, and court costs arising from any act or omission of the Supplier, its officers, employees, agents, Suppliers, or subcontractors at any tier, in the performance of any of its obligations under this provision.

INDEPENDENT CONTRACTOR RELATIONSHIP AND SUBCONTRACTOR PERSONNEL

1. Supplier's relationship to Buyer shall be that of an Independent Contractor and this purchase order does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Buyer and Supplier personnel. Personnel supplied by Supplier hereunder shall be deemed employees of Supplier and shall not for any purposes be considered employees or agents of Buyer. Supplier assumes full responsibility for the actions and supervision of such personnel while performing services under this purchase order. Buyer assumes no liability for Supplier personnel.
2. Supplier shall inform Buyer if a former employee of Buyer will be assigned Work under this purchase order, and any such assignment shall be subject to Buyer approval.
3. Nothing contained in this purchase order shall be construed as granting to Supplier or any personnel of Supplier rights under any benefit plan of Buyer or its parent.
4. All persons, property, and vehicles entering or leaving Buyer's or Government's premises are subject to search.
5. Supplier will promptly notify Buyer and provide a report of any accidents or security incidents involving loss of or misuse or damage to Buyer's or Government's intellectual or physical assets, and all physical altercations, assaults, or harassment involving Supplier's personnel performing work under this purchase order.
6. Supplier personnel: (i) will not remove Buyer or Government assets from Buyer's or Government's premises without Buyer authorization; (ii) will use Buyer or Government assets only for purposes of this purchase order; (iii) will only connect with, interact with or use computer resources, networks, programs, tools or routines that Buyer agrees are needed to provide services; and (iv) will not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. Buyer may periodically audit Supplier's data residing on Buyer or Government's information assets.
7. Supplier shall indemnify and hold harmless Buyer from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Buyer may sustain or incur in consequence of (i) Supplier's failure to pay any employee for the Work rendered under this purchase order, or (ii) any claims made by Supplier's personnel against Buyer.
8. The Supplier will verify all contract workers that it provides to Buyer are authorized to work in the United States.
9. The Supplier will take appropriate action to remove its employees working on this contract who are later discovered not to be legally authorized to work in the United States and/or whose identity is in question.
10. Supplier indemnifies Buyer from any and all liability, loss or damage the Buyer may suffer as a result of claims, demands, costs or judgments against it arising out of or resulting from the purchase order.

LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS

If the EFT information changes after submission of correct EFT information, Buyer shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, Supplier may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment, Supplier's request for suspension shall extend the due date for payment by the number of days of the suspension.

If an uncompleted or erroneous transfer occurs because Buyer used the Supplier EFT information incorrectly, Buyer remains responsible for making a correct payment and recovering any erroneously directed funds.

If an uncompleted or erroneous transfer occurs because the Supplier EFT information was incorrect, or was revised within 30 days of Buyer release of the EFT payment transaction instruction to the Federal Reserve System, and-

- If the funds are no longer under the control of the payment office, Buyer is deemed to have made payment and Supplier is responsible for recovery of any erroneously directed funds; or

- If the funds remain under the control of the payment office, Buyer shall not make payment and the provisions of the first paragraph shall apply.

MEMORY BEARING COMPONENTS

A memory bearing component is computer memory that can retain the stored information even when not powered. Examples include, but are not limited to, read-only memory, flash memory, most types of magnetic computer storage devices (e.g. hard disks, floppy disks, magnetic tape), optical discs, and early computer storage methods (e.g. paper tape, punched cards). A memory bearing component shall not be removed from Buyer site following delivery unless Buyer can conclude that the component is free from any classified or sensitive data and removal of the component is approved by Buyer. Magnetic media is subject to Buyer Security Regulations and will not be allowed to be removed from Buyer sites. Memory bearing components retained by Buyer, in accordance with Buyer Security Requirements, shall be charged to Buyer at Supplier's cost. Supplier shall invoice for reimbursement for each part replaced or repaired.

SUPPLIER LIABILITIES AND INDEMNIFICATIONS

This purchase order does not bind nor purport to bind the United States Government, its officers, employees, or agents. As to the Work to be done, or services to be performed by Supplier on Buyer premises, Government premises, or the premises of other Buyer Suppliers, Supplier assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death), or damage or alleged damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of performance of the Work. Supplier will indemnify and save harmless the Government and Buyer, or other Buyer Suppliers, from and against any and all claims, demands, actions, causes of actions, suits, damages, expenses (including attorneys' fees) and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property which may occur or be alleged to have occurred as a result of or in connection with the performance of this purchase order. Supplier further agrees to indemnify Buyer and the Government against, and to save and hold harmless Buyer and the Government from any and all liability, and expense with respect to claims against Buyer or the Government which may result from the failure or alleged failure of Supplier or any of its lower-tier subcontractors to comply with the requirements of this purchase order.

TITLE AND ADMINISTRATION

All site work performed in furtherance of this purchase order will be on real property owned by the U.S. Government. Title and all property rights and interests resulting from this purchase order shall pass directly from Supplier to the Government, upon acceptance, regardless of when or where the Government takes physical possession. Payments under this purchase order will be made by Buyer from funds advanced by the Government, not from Buyer's own assets. Administration of this purchase order may be transferred to DOE or its designee, and in case of such transfer and notice thereof to Supplier, Buyer shall have no further responsibilities hereunder.

USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES

- (a) Acquisition of Information Technology. The Buyer may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for the Supplier's use in the performance of the order; and the Buyer may provide guidance to the Supplier regarding usage of such equipment, existing computer software, and third party services. Supplier is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Buyer's direct expense without prior written approval of the Buyer. Should the Supplier propose to acquire information technology equipment, existing computer software, or third party services, the Supplier shall provide to the Buyer justification for the need, including a complete description of the equipment, existing computer software, or third party services to be acquired, and a lease versus purchase analysis if appropriate.
- (b) Supplier shall immediately provide written notice to the Buyer when an employee of the Supplier no longer requires access to Buyer information technology systems.
- (c) Supplier shall not violate any software licensing agreement, or cause the Buyer to violate any licensing agreement.
- (d) Supplier agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by the Buyer except as permitted by the license agreement or any other terms and conditions under which the software is made available to the Supplier.
- (e) If at any time during the performance of this order the Supplier has reason to believe that its utilization of Buyer furnished existing computer software may involve or result in a violation of the software licensing agreement, the Supplier shall promptly notify the Buyer, in writing, of the pertinent facts and circumstances. Pending direction from the Buyer, the Supplier shall continue performance of the work required under this contract without utilizing the software.
- (f) Supplier agrees to include the requirements of this clause in all subcontracts at any tier.
- (g) Supplier shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the order pursuant to DEAR 970.5204-2, Laws, Regulations and DOE Directives.

WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

- (a) Supplier shall comply with the requirements of “DOE Contractor Employee Protection Program” at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or –leased sites.
- (b) Supplier 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.