



## APPENDIX A

### Terms and Conditions – Firm-Fixed Price (Commercial Items & Services)

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## Terms and Conditions – Firm-Fixed Price (Commercial Items and Services)

### CLAUSES

#### CLAUSE 1 - ACCEPTANCE (AMES LAB) (JUN 2019)

This Contract constitutes the entire agreement between the parties with respect to the subject matter contained in this Contract and supersedes all prior agreements, understandings, and negotiations between the parties. All other terms and conditions in other instruments are void and shall have no force or effect.

#### CLAUSE 2 - DEFINITIONS (MAR 2021)

When an article, provision, or clause in this subcontract uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless:

1. The solicitation, or amended solicitation, provides a different definition;
2. The contracting parties agree to a different definition in the subcontract;
3. The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
4. The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception or different definition set forth in 1.1 applies.

##### (a) Definitions.

As used throughout this subcontract, the following terms have the meanings set forth below:

"Ames Laboratory" means the physical site and property that is The Ames Laboratory.

"Ames Laboratory or Contractor's Procurement Agent" shall mean the person in charge of administering this subcontract for Ames Laboratory or their written designee.

"Ames Laboratory Technical Representative" shall mean the person designated to monitor the subcontracts work and to interpret and clarify the technical requirements of the subcontract.

"CFR" means the Code of Federal Regulations.

"Commercial item" and "commercially available off-the-shelf item (COTS)" have the meanings contained in Federal Acquisition Regulation, FAR, 2.101, Definitions.

"Contract" means this subcontract. Additionally, where contract and contractor are referenced in the FAR, it shall mean subcontract and subcontractor for the purposes of this subcontract.

"Contracting Officer" as referenced in the FAR shall mean "Procurement Agent" for the purposes of this subcontract.

"DEAR" means the Department of Energy Acquisition Regulation.

"DOE" means the United States Department of Energy or any duly authorized representative thereof.

"FAR" means the Federal Acquisition Regulations.

"Government" means the United States of America and includes the DOE or any duly authorized representative(s) thereof.

"Manager and Operator or M&O" shall mean Iowa State University (ISU), which is the Manager and Operator of Ames Laboratory.

"Prime Contract" means the contract between ISU and the DOE.

"Subcontract" means this subcontract between Ames Laboratory and the Subcontractor.

"Sub-subcontracts" means the Subcontractor's subcontracts. Except as otherwise provided in this subcontract, "sub-subcontractors" includes purchase orders under this subcontract.

"Subcontractor" means the party that has entered into this subcontract with Ames Laboratory. The lower case "subcontractor" means sub-subcontractors.

"The Laboratory" means Ames Laboratory or Laboratory.

#### CLAUSE 3 - ORDER OF PRECEDENCE (MAR 2021)

Any inconsistency in this subcontract shall be resolved by giving precedence in the following order:

- (a) The subcontract document;
- (b) These Terms and Conditions, including the FAR and DEAR clauses incorporated by reference;
- (c) Any specifications, drawings, sketches, statement of work; and
- (d) Other documents, exhibits, and attachments listed in the subcontract as incorporated documents, if any, in the order in which they are listed.

#### CLAUSE 4 – FAR 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (MAR 2020) [DEVIATION JUN 2020]

- (a) Evaluation preference.
  - (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except-
    - (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and
    - (ii) Otherwise successful offers from small business concerns.
  - (2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.
  - (3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.
- (b) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes.  
 Offeror elects to waive the evaluation preference.
- (c) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by [13 CFR 126.501](#) if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

#### CLAUSE 5 - FAR 52.225-1 BUY AMERICAN – SUPPLIES (JAN 2021) (MODIFIED BY DEAR 970.2570)

- (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 Federal Acquisition Regulation (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 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.

## Terms and Conditions – Firm-Fixed Price (Commercial Items and Services)

### Domestic end product means—

- (1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both:
  - (i) An unmanufactured end product mined or produced in the United States;
  - (ii) An end product manufactured in the United States, if:
    - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 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. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
    - (B) The end product is a COTS item; or
- (2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of "cost of components".

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

*Fastener* means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

*Foreign end product* means an end product other than a domestic end product.

*Foreign iron and steel* means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

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

- (b) [41 U.S.C. chapter 83](#), Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see [12.505\(a\)\(1\)](#)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners.
- (c) Offerors may obtain from the Procurement Agent a list of foreign articles that the DOE Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver 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 Certificate."

### CLAUSE 6 – FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) [DEVIATION APR 2020]

- (a) (1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307, upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract in accordance with the accelerated payment date established, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, with a goal of 15 days after receipt of a proper invoice and all other required documentation from the small business subcontractor if a specific payment date is not established.
- (2) The Contractor agree to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.
- (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
- (c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

### CLAUSE 7 - FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)

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

*Commercial item* and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) [2.101](#).

*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 non-developmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
  - (i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Jun 2020) ([41 U.S.C. 3509](#)), if the subcontract exceeds the threshold specified in FAR [3.1004\(a\)](#) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
  - (ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
  - (iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).
  - (iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (Jun 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).
  - (v) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).
  - (vi) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).
  - (vii) [52.219-8](#), Utilization of Small Business Concerns (Oct 2018) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.
  - (viii) [52.222-21](#), *Prohibition of Segregated Facilities* (Apr 2015).
  - (ix) [52.222-26](#), Equal Opportunity (Sept 2015) (E.O. 11246).
  - (x) [52.222-35](#), Equal Opportunity for Veterans (Jun 2020) ([38 U.S.C. 4212\(a\)](#));
  - (xi) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jun 2020) ([29 U.S.C. 793](#)).
  - (xii) [52.222-37](#), Employment Reports on Veterans (Jun 2020) ([38 U.S.C. 4212](#)).
  - (xiii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).
  - (xiv)
    - (A) [52.222-50](#), Combating Trafficking in Persons (Oct 2020) ([22 U.S.C. chapter 78](#) and E.O. 13627).
    - (B) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).
  - (xv) [52.222-55](#), Minimum Wages under Executive Order 13658 (NOV 2020), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).
  - (xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).
  - (xvii)
    - (A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3\(f\)](#).
    - (B) Alternate I (Jan 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3\(f\)](#) and the agency specifies that only its agency-provided training is acceptable.
  - (xviii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302](#) *Note*).
  - (xix) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause [52.232-40](#).
  - (xx) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. App. 1241](#) and [10 U.S.C. 2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#).
- (3) 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.

### CLAUSE 8 - FAR 52.246-20 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 shall give written notice of any defect or nonconformance to the Contractor. This notice shall state either-

## Terms and Conditions – Firm-Fixed Price (Commercial Items and Services)

- (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 reperformed 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 may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.
- (d) If the Laboratory does not require correction or reperformance, the Laboratory shall make an equitable adjustment in the contract price.

### **CLAUSE 9 - WARRANTY OF SUPPLIES (AMESLAB MAY 2019)**

- (a) Contractor warrants to the Laboratory that all materials and equipment furnished under this Contract will be new and unused unless otherwise specified and that all materials and equipment used by the Contractor during the performance of the Contract will include genuine, original, and new components, or are otherwise suitable for the intended purpose. Contractor further warrants that all work will be of good quality, free from faults and defects in conformance with the Contract. All work not conforming to these standards including substitutions not authorized as provided elsewhere in the Contract may be considered defective. If required by the Laboratory, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Laboratory may reject and retain such non-conforming materials or equipment, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.
- (b) The warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract.
- (c) Contractor warrants all equipment and materials furnished and work performed under this Contract against defective materials and workmanship for a period of twelve (12) months after acceptance as provided in this Contract, unless a longer period is specified, regardless of whether the same were furnished by the Contractor or any subcontractors of any tier. Manufacturer's warranties longer than twelve (12) months shall be extended to the Laboratory. Upon written notice from the Laboratory of any breach of warranty during the applicable warranty period due to defective material or workmanship, the affected part or parts shall be repaired or replaced by the Contractor at no cost to the Laboratory. If Contractor fails or refuses to make the necessary repairs, replacements, and tests when requested by the Laboratory, the Laboratory may perform the necessary work and tests to be performed, at the Contractor's expense.
- (d) Should one or more defects in the work appear within the specified warranty period, the Laboratory shall have the right to continue to use or operate the defective part or apparatus until such time as it can be taken out of service without loss or inconvenience to the Laboratory.
- (e) Neither the final payment, nor any provision in the Contract, nor partial or entire occupancy of the premises by the Laboratory, nor expiration of warranty stated herein constitute acceptance of work not performed in accordance with the Contract or relieve the Contractor of liability for non-conforming work. Contractor shall immediately remedy any defects in the work and pay for any damage to other Work resulting therefrom upon written notice from the Laboratory. Should Contractor fail or refuse to remedy non-conforming work, the Laboratory may perform the work necessary to bring the work into conformance with the Contract at the Contractor's expense.
- (f) When correcting failed or damaged warranted construction, Contractor shall, at its expense, remove and replace construction that has been damaged as a result of such failure or that must be removed and replaced to provide access for correction of warranted construction.
- (g) When work covered by a warranty have failed and been corrected by replacement or rebuilding, the warranty shall be reinstated and shall be equal to the original warranty with an equitable adjustment for depreciation.
- (h) Upon determination that Work covered by a warranty has failed, Contractor shall replace or rebuild the work to an acceptable condition complying with requirements of the Contract. Contractor is responsible for the cost of replacing or rebuilding defective work regardless of whether University has benefited from use of work through a portion of its anticipated useful service life.
- (i) Expressed warranties made to the University are in addition to implied warranties and shall not limit the duties, obligations, rights, and remedies otherwise available under the law. Expressed warranty periods shall not be interpreted as limitations on the time in which the Laboratory can enforce such other duties, obligations, rights, or remedies.

### **CLAUSE 10 – ELECTRONIC SIGNATURES (AMESLAB MAY 2019)**

The parties' consent to the use of electronic signatures in connection with the signing of this Contract. The parties agree the electronic signatures shall be legally binding with the same force and effect as manually executed signatures if they are made using a technology designed for electronic signatures (e.g., Adobe Signature / DocuSign).

### **CLAUSE 11 – EMPLOYEE CONCERNS PROGRAM (BASED ON DOE O 442.1B) (AMESLAB SEP 2019)**

- (a) Definitions. An employee concern is a good faith expression by a concerned individual that:
- (1) An activity, policy, or practice of DOE or one of its contractors or subcontractors – including, but not limited to, that which is related to the environment, safety, health, security, quality, and management of DOE facilities and/or operations -should be improved, modified, or terminated; or
  - (2) He or she has been subjected to HIRD (harassment, intimidation, retaliation/reprisal, or discrimination as defined in DOE O 442.1B) by DOE or one or more of its contractors or subcontractors, for raising an employee concern.
  - (3) For purposes of this section, "employee" includes Subcontractor employees, at all tiers.
- (b) Ames Laboratory encourages all subcontractor employees to report to Ames Laboratory so that the Laboratory may promptly address employee concerns. It is recommended employee concerns be reported to and resolved by the lowest management level possible. If the issue is not resolved, the concerned individual has the responsibility to escalate the concern in the following order:
- (1) It is recommended to discuss the concern with a direct supervisor or manager at the Laboratory.
  - (2) If uncomfortable doing so, or resolution has not occurred, contact the Ames Laboratory Employee Concerns Program Manager (ECPM) via e-mail at [employeeconcern@ameslab.gov](mailto:employeeconcern@ameslab.gov) or via phone at 515-294-2153.
  - (3) If further escalation is needed, or the employee is not comfortable discussing with the ECPM, subject is sensitive in nature, employees should contact one of the following resources:
    - ISU Compliance and Ethics Hotline at 515-294-7119
    - Ames Site Office resources (i.e., SC ECP Manager at 1-800-701-9966; [scfieldecp@science.doe.gov](mailto:scfieldecp@science.doe.gov); or U.S. Department of Energy Employee Concerns Program at 1-844-799-8855)
    - Concerns may also be directly reported to the DOE through the Office of Inspector General Hotline at 800-541-1625 or [ighotline@hq.doe.gov](mailto:ighotline@hq.doe.gov).
- (c) Concerns may be expressed by the individual, a proxy, or by a third party. Employees raising concerns may request anonymity and confidentiality, which the Laboratory can provide unless otherwise required by law, regulation or policy.
- (d) Closing a concern. A concern is closed when one of the following occurs: 1) investigation is complete, the issue has been resolved, and corrective actions have been completed, 2) the concern has been transferred or referred by the ECPM and a responsible organization has accepted jurisdiction over the matter, or 3) the employee withdraws the concern.
- (e) Applicability. The employee concerns program applies to all Ames Laboratory staff, subcontractors at all tiers, and visitors. This clause must be included in all contracts and subcontracts, at all tiers.

### **CLAUSE 12 – GOVERNMENTAL IMMUNITY (AMESLAB MAY 2019)**

The Iowa Tort Claims Act, Iowa Code Chapter 669, limits the liability of Ames Laboratory, Iowa State University, the Board of Regents-State of Iowa, the State of Iowa (collectively, the "State Entities") and their officers, employees and agents. In addition, Article VII, Section 1 of the Constitution of the State of Iowa prohibits State Entities from being responsible for the debts or liabilities of any individual, association or corporation. Any provision in this Contract will be deemed modified to limit the liability of the State Entities and their officers, employees and agents as set forth in these laws. Ames Laboratory reserves any immunities, defenses or other limitations on liability to which University is entitled by law.

### **CLAUSE 13 – CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (AMESLAB JUN 2015)**

- (a) *Inspection/Acceptance.* The contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Laboratory reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Laboratory may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Laboratory may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Laboratory must exercise its post acceptance rights—
- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
  - (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) *Changes.* No changes shall be made to any requirements of the contract without the prior written approval of the Laboratory or via a change contract. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- (c) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.
- (d) *Excusable delays.* The contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Laboratory or the Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of

## Terms and Conditions – Firm-Fixed Price (Commercial Items and Services)

common carriers. The contractor shall notify the Laboratory in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Laboratory of the cessation of such occurrence.

- (e) **Patent indemnity.** The contractor shall indemnify the Laboratory, Iowa State University of Science and Technology, the Board of Regents – State of Iowa, and the State of Iowa and their officers, employees, and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, or copyright, arising out of the performance of this contract, provided the contractor is reasonably notified of such claims and proceedings.
- (f) **Payment.**—
- (1) **Items accepted.** Payment shall be made for items accepted by the Laboratory that have been delivered to the delivery destinations set forth in this contract.
  - (2) **Prompt payment.** Upon the submission of proper invoices or vouchers, the Laboratory shall make payment at the prices stipulated in this contract by check, electronic funds, or as the parties may otherwise agree.
  - (3) **Discount.** In connection with any discount offered for early payment, time shall be computed from the date the invoice is received at the Laboratory. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
  - (4) **Overpayments.** If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Laboratory has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
    - (i) remit the overpayment amount to the Laboratory's payment office along with a description of the overpayment, including the (A) circumstances of the overpayment (e.g., duplicate payment, erroneous payment, date(s) of overpayment); (B) affected contract number and delivery order number, if applicable; (C) affected contract line item or subtitle item, if applicable; and contractor point of contact.
    - (ii) Provide a copy of the remittance and supporting documentation to the Laboratory Procurement Official.
- (g) **Risk of loss.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract 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) Delivery of the supplies to the Laboratory at the destination specified in the contract, if transportation is f.o.b. destination.
- (h) **Taxes.** The contract price includes all applicable Federal, State, and local taxes and duties. The Laboratory is exempt from federal excise taxes and state and local sales and use taxes, and Contractor shall not include such taxes in the contract price.
- (i) **Termination for the Laboratory's convenience.** The Laboratory reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the contractor can demonstrate to the satisfaction of the Laboratory using its standard record keeping system, have resulted from the termination. The contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (j) **Termination for cause.** The Laboratory may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the Laboratory, upon request, with adequate assurances of future performance. In the event of termination for cause, the Laboratory shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the Laboratory for any and all rights and remedies provided by law. If it is determined that the Laboratory improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (k) **Title.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Laboratory takes physical possession.
- (l) **Warranty.** The contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- (m) **Limitation of liability.** Except as otherwise provided by an express warranty, the contractor will not be liable to the Laboratory for consequential damages resulting from any defect or deficiencies in accepted items.
- (n) **Other compliances.** The contractor shall comply with all applicable Federal, State and local laws, executive orders, rules, and regulations applicable to its performance under this contract.
- (o) **Compliance with laws unique to Government contracts.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

### CLAUSE 14 – QUALITY ASSURANCE (AMESLAB JUNE 2019)

- (a) **Assessment.** The Contractor's quality system is subject to assessment by the Laboratory for conformance with the requirements of this purchase. Any supplier or distributor shall allow Laboratory representatives and regulatory agencies right of entry into the supplier or distributor facilities to determine and verify product, processes, records, personnel, material, procedures, and systems.
- (b) **Responsibility for subcontractors.** It is the responsibility of the Contractor to impose applicable quality assurance requirements upon its subcontractors. The Laboratory reserves the right to disapprove, in writing, any subcontractor.
- (c) **Responsibility for conformance.** The Contractor is responsible to provide items that conform to the requirements of the contract regardless of any assessments, surveillances, inspections and/or tests by the Laboratory at either the Contractor's or Laboratory's facility. The Laboratory reserves the right to request failure analysis and corrective action for non-conforming articles or items submitted or supplied to the Laboratory. The Contractor is responsible for notifying the Buyer of any recalls or alerts associated with this Purchase.
- (d) **Packaging.** The Contractor shall employ procedures that assure adequate protection of material and equipment during shipment and while in storage. Such protection should include special environmental packaging, as necessary. All items shipped to the Laboratory (or as designated shipping destination) in the contract, should comply with the requirements for preservation, packaging and marking as stated in the latest revision of ASTM Standard D 3951 Standard Practice for Commercial Packaging. Packages with a gross weight equal to or greater than 400 pounds (180 kilograms) should be marked with the center of gravity location and gross weight on at least one side, or end panel.
- (e) **Chemicals.** The Contractor shall delivery any chemical purchases in full compliance with the Department of Labor, Occupational Safety & Health Administration (OSHA)'s Globally Harmonized System (GHS) Hazard Communication Standard (29 CFR 1910.1200), available at: <http://www.osha.gov/dsg/hazcom/HCSFinalRegTxt.html>. A GHS Safety Data Sheet (SDS) shall be available for all hazardous chemicals delivered to the Laboratory with the format and content specified in 29 CFR 1910.1200. All hazardous chemicals shall have a label with the elements specified in 29 CFR 1910.1200 [product identifier; pictograms; signal words; hazard statement(s); precautionary statement(s); and manufacturer, importer, or distributor's name, address, and telephone number].

### CLAUSE 15 – DISPUTES (AMESLAB JUNE 2015)

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

### CLAUSE 16 – CONDUCT OF EMPLOYEES (AMESLAB MAY 2019)

The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The contractor shall immediately remove from the work any employee of the contractor who, in the sole discretion of the Laboratory, is found to be unsatisfactory in technical performance or personal conduct.

### CLAUSE 17 – LABORATORY SITE ACCESS AND/OR PARTICIPATION IN ACTIVITIES BY NON-U.S. NATIONALS (AMESLAB OCT 2014)

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

## Terms and Conditions – Firm-Fixed Price (Commercial Items and Services)

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

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

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

### **CLAUSE 18 – EXPORT CONTROLS (AMESLAB JUNE 2019)**

Contractor shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 774, in the performance of this Contract. In the absence of available license exemptions/exceptions, Contractor shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

Prior to disclosing or transferring to the Laboratory any hardware, technical data, software or product utilizing any hardware, technical data or software which is subject to export controls under federal law, Contractor shall notify the Laboratory in writing of the nature and extent of the export control. The Laboratory shall have the right to decline any such technical data or product utilizing such data. In the event Contractor sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the Laboratory has the right to immediately terminate this Contract.

### **CLAUSE 19 – LIMITATIONS PERIOD (AMESLAB MAY 2019)**

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

### **CLAUSE 20 – INDEMNIFICATION (AMESLAB MAY 2019)**

Contractor shall indemnify and hold harmless Ames Laboratory, Iowa State University, the Board of Regents-State of Iowa, the State of Iowa, the United States Government and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to legal fees, arising out of or resulting from:

- (a) The material non-performance, non-compliance or breach of the terms of this Contract;
- (b) Any negligent or wrongful act or omission of Contractor or its subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable; or
- (c) Any infringement by Contractor of a copyright, trademark, patent or other intellectual property right.

Contractor's indemnification obligation will not be limited by the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under workers' compensation, disability benefits or other employee benefit acts.

### **CLAUSE 21 - ASSIGNMENT (AMESLAB MAY 2019)**

Except with the prior consent of the laboratory, Contractor shall not assign, convey, or transfer this Contract or any rights, obligations or remedies in this Contract; however, the Laboratory may assign this Contract in whole or in part to the Government, to a successor operator of the Laboratory, or as otherwise directed by the Government.

### **CLAUSE 22 – APPLICABLE LAW (AMESLAB MAY 2019)**

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

### **CLAUSE 23 – INFORMATION TECHNOLOGY ACQUISITIONS (based on Prime Contract Clause H.36 Mod 0288)**

Prior to use under this contract, all information technology shall be compliant with the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the contract and conducive to the research and development efforts of the Contractor. This requirement shall be included in all subcontracts, as appropriate, which are for information technology acquisitions; and the Laboratory Chief Information Officer shall annually certify to the DOE Site Office Contracting Officer that this requirement is being incorporated into information technology acquisitions.

### **CLAUSE 24 – INTEGRATION CLAUSE (AMESLAB MAY 2019)**

This Contract is the entire contract between the parties. Unless otherwise provided in this Contract, this Contract supersedes all prior contracts or agreements between the Laboratory and the Contractor for the goods and services provided in this Contract. In the event of Contractor discovers a discrepancy, inconsistency, or conflict between one or more of the documents comprising this Contract, Contractor shall submit a request for written clarification to the Laboratory. Any work undertaken by the contractor without such decision shall be at the Contractor's own risk.

### **CLAUSE 25 – NON-WAIVER OF DEFAULTS (AMESLAB OCT 2014)**

Any failure by the Laboratory at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this contract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, nor the right of the Laboratory at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

### **CLAUSE 26 – WAIVER (AMESLAB APR 2019)**

The failure of the Laboratory to require the performance of any term or obligation of this Contract, or the waiver by the Laboratory of any breach of this Contract, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver.

### **CLAUSE 27 – USE OF NAME OR INTELLECTUAL PROPERTY (AMESLAB OCT 2019)**

Contractor shall not use the name, service marks, logos, or trademarks of Ames Laboratory, Iowa State University, the Government or the name of any of their employees in a publicity of advertising, including endorsements or as a business reference, without the prior written consent of such entities or persons.

### **CLAUSE 28 - DEAR 970.5204-2 - LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)(DEVIATION MAY 2018)[SC-ALTERNATE SEP 2018]**

- (a) In performing work under this contract, the Contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the Contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. The Laboratory may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the Laboratory shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the Laboratory's notice, the contractor shall advise the Procurement Agent in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the Laboratory shall decide whether to revise List B and so advise the contractor.
- (c) The contractor shall procure all necessary permits or licenses required for the performance of work under this contract **separately, or jointly with DOE as co-permittees, as appropriate.**
- (d) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

### **CLAUSE 29 - DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) [SC-ALTERNATE SEP 2018]**

- (a) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. In the performance of work under this contract, the Contractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well-being of Federal employees, contract service providers and visitors using the facility.
- (b) Green purchasing or sustainable acquisition has several interacting initiatives. The Contractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The Contractor may request an equitable adjustment to the terms of its contract using the procedures at 48 CFR 970.5243-1 Changes. The initiatives important to these Orders are explained on the following Government or Industry Internet Sites:
  - (1) Recycled Content Products are described at <http://epa.gov/cpg>

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- (2) Biobased Products are described at <http://www.biopreferred.gov/>
  - (3) Energy efficient products are at <http://energystar.gov/products> for Energy Star products
  - (4) Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products
  - (5) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site
  - (6) Greenhouse gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>
  - (7) Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>
  - (8) Water efficient plumbing products are at <http://epa.gov/watersense>
- (c) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Contractor require provision of any of the above types of products, the Contractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—
- (1) Is not available;
  - (2) Is not life cycle cost effective (or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable), EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level;
  - (3) Does not meet performance needs; or,
  - (4) Cannot be delivered in time to meet a critical need.
- (d) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). The Contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.
- (e) Contractors must establish and maintain a documented energy management program which includes requirements for energy and water efficient equipment, EnergyStar or WaterSense, as applicable and procedures for verification of purchases, following the criteria in DOE Order 430.2B, Departmental Energy, Renewable Energy, and Transportation Management, Attachment 1, or its successor. This requirement should not be flowed down to subcontractors.
- (f) In complying with the requirements of paragraph (c) of this clause, the Contractor shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position.
- (g) The Contractor shall prepare and submit performance reports using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default.
- (h) These provisions shall be flowed down only to first tier construction subcontracts exceeding the simplified acquisition threshold that offer significant opportunities for designating energy efficient or environmentally sustainable products or services in the materials selection process. The subcontractor is not required to comply with the procedures in paragraphs (c) through (f) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (c) through (f) of this clause.
- (i) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "Subcontractor."

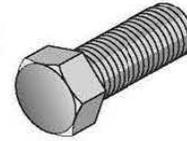
### CLAUSE 30 – SUSPECT COUNTERFEIT PARTS (BASED ON DOE ORDER 414.1D CHG 2 (LTDCHG) SEP 15, 2020)

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

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

The Contractor should flow this requirement down to all subcontractors to prevent inadvertent use of counterfeit parts and materials. For more information, refer to the DOE Website: <http://www.hss.energy.gov/sesa/corporate/safety/sci>. (see next page).

# Suspect/Counterfeit Bolt Headmark List



**Any bolt on this list should be treated as defective without further testing.**

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)



NF Nippon Fasteners (JP)



H Hinomoto Metal (JP)



M Minamida Sieybo (JP)



MS Minato Kogyo (JP)



Hollow Triangle Infasco (CA, TW, JP, and YU)  
(Greater than 1/2-inch diameter)



E Daiei (JP)



**MARK MANUFACTURER**

KS Kosaka Kogyo (JP)



RT Takai Ltd. (JP)



FM Fastener Co. of Japan (JP)



KY Kyoei Mfg. (JP)



J Jinn Her (TW)



UNY Unytite (JP)

Grade 8.2 fastener with the following headmark:



**MARK MANUFACTURER**

KS Kosaka Kogyo (JP)

Grade A325 fasteners (BENNETT DENVER TARGET ONLY) with the following headmarks:



Type 1



Type 2



Type 3

**MARK MANUFACTURER**

A325 KS Kosaka Kogyo (JP)

Headmarkings are usually raised – sometimes indented.

\*KEY: CA-Canada, JP-Japan, TW-Taiwan, YU-the former Yugoslavia

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### **THE FOLLOWING CLAUSES APPLY REGARDLESS OF SUBCONTRACT VALUE**

FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)  
FAR 52.204-9(a) and (d) PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)[APPLIES IF SERVICES ARE PERFORMED ON DOE SITE]  
FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)  
FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)  
FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)  
FAR 52.208-8 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (AUG 2018) (APPLIES ONLY IF PERFORMANCE OF THE CONTRACT INVOLVES A MAJOR HELIUM REQUIREMENT)  
FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)  
FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)  
FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016)  
FAR 52.222-29 NOTIFICATION OF VISA DENIAL (APR 2015)  
FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018)  
FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (OCT 2020)  
FAR 52.223-2 – AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)  
FAR 52.223-3 – HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALTERNATE I) (JULY 1995)  
FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011) (ALTERNATE I)  
FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)  
FAR 52.223-12 MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUN 2016)  
FAR 52.223-13 ACQUISITION OF EPEAT®-REGISTERED IMAGING EQUIPMENT (JUN 2014)  
FAR 52.223-14 ACQUISITION OF EPEAT®-REGISTERED TELEVISIONS (JUNE 2014)  
FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (MAY 2020)  
FAR 52.223-16 ACQUISITION OF EPEAT®-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015)  
FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)  
FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)  
FAR 52.247-6 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)  
DEAR 952.204-77 COMPUTER SECURITY (AUG 2006)  
DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000) [APPLIES IF SERVICES ARE PERFORMED ON DOE SITE]

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS MIRCOPURCHASE THRESHOLD, DEFINED IN FAR PART 2**

FAR 52.222-3 CONVICT LABOR (JUN 2003)  
FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$15,000**

FAR 52.222-36 EQUAL EMPLOYMENT FOR WORKERS WITH DISABILITIES (JUN 2020)  
FAR 52.225-8 DUTY FREE ENTRY (OCT 2010)

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$30,000.00**

FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$35,000.00**

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020)

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$100,000.00**

FAR 52.227-1 AUTHORIZATION AND CONSENT (JUN 2020) WITHOUT ALTERNATE 1 (PER DEAR 970.5227-4 (AUG 2002) [SC ALTERNATE 2018])

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$150,000.00**

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)  
FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)  
FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)  
FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)  
FAR 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008) (EXCLUDES COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS).

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS THE SIMPLIFIED ACQUISITION THRESHOLD, DEFINED IN FAR PART 2**

FAR 52.203-3 GRATUITIES (APR 1984)  
FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT ALTERNATE I (OCT 1995) (JUN 2020)  
FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS  
FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER  
FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)  
FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)  
FAR 52.242-13 BANKRUPTCY (JUL 1995)

### **FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$600,000.00**

FAR 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$750,000.00**

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUN 2020)  
FAR 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)

### **THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT VALUE EXCEEDS \$6 MILLION**

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (JUN 2020)