

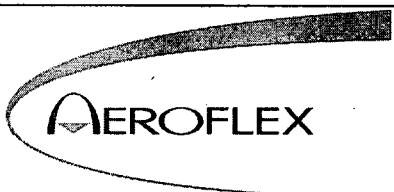
DOCUMENT REVISION HISTORY

REV.	DESCRIPTION	TYPED BY	DATE	APPROVED
A	Initial Release	GES	8-10-10	<i>KM</i>

**AEROFLEX
TERMS AND CONDITIONS**

PROPRIETARY: Except as otherwise agreed in writing, the information and design disclosed herein are the property of Aeroflex Plainview and must not be copied or distributed outside Aeroflex except to authorized persons with a genuine need-to-know who by the use hereof acknowledge Aeroflex ownership and agree to maintain this information and design in strict confidence.

SHEET	33	34	35	36	37	38	39									
REV.	A	A	A	A	A	A	A									
SHEET	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
REV.	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
SHEET	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
REV.	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PURCHASING <i>J. Jones</i>	DATE 8/10/10	MATERIALS <i>[Signature]</i>	ATS 8/10/10	DATE				
QUALITY ASSURANCE <i>J. Salles</i>	ATS 8/10/10	DATE	QUALITY ASSURANCE <i>John W. Jones</i>	AMS 8/10/10	DATE	MATERIALS <i>[Signature]</i>	AMS 8/10/10	DATE
 <p>AEROFLEX</p> <p>Plainview, NY 11803</p>		<p>CAGE CODE</p> <p align="center">88379</p> <p>SIZE A</p>		<p>DOCUMENT NUMBER:</p> <p align="center">SOP-PUR-1105</p> <p align="center">SHEET 1 of 39</p>				

AEROFLEX PLAINVIEW
PURCHASE ORDER TERMS AND CONDITIONS
DEFINITIONS

As used throughout this order, the following definitions apply unless otherwise specifically stated:

- a. "Buyer" means the legal entity issuing this order.
- b. "order" means this contractual instrument, including change notices, supplements, amendments, or modifications thereto.
- c. "Seller" means the legal entity performing work for Buyer pursuant to this order.
- d. "Government" means the Government of the United States unless otherwise specified.
- e. "Buyer's customer" means a customer other than the Government of the United States.
- f. "prime contract" means the Government contract under which this order is issued.
- g. "goods," "supplies," or "items" means those part numbers, model numbers and/or descriptions set forth on the face of this order.
- h. "services" means any effort supplied by Seller incidental to the sale of goods by Seller under this order including, without limitation, installation, repair and maintenance services. The term "services" shall also include, without limitation, any effort specifically required by this order such as design, engineering, maintenance, technical, construction, consulting or professional services.
- i. "Contracting Officer" means any officer or civilian employee of the Government who is properly designated and duly authorized to enter into, administer, or make any determinations or findings with respect to the prime contract, including the authorized representative of the Contracting Officer acting within the limits of his authority.
- j. "FAR" means Federal Acquisition Regulation.

SHIPPING AND BILLING INSTRUCTIONS

- A. **PACKING**—Unless otherwise specified, standard commercial preservation, packing and packaging is acceptable. Do not make any charges for packaging or boxing since Buyer will not allow such charges. Do not combine in same container material for different receiving locations.
- B. **MARKING**—Exterior containers must be marked with the following: (i) address, (ii) purchase order number; (iii) part number; and (iv) any other special markings called for by this order.
- C. **BILL OF LADING**—The bill of lading must reference purchase order number, correct ship to address. When delivery point is f. o. b. origin, make NO declaration of value on bill of lading EXCEPT where a declaration of value will result in lower total cost of shipment, and then declare such value as will entitle Buyer to the lowest applicable transportation rates. The original copy of the bill of lading shall be retained by Seller for one (1) year and provided to Buyer's Traffic Department if requested.
- D. **ROUTING**—On orders where Buyer either pays for or reimburses Seller directly for shipping costs, ship in accordance with routing instructions furnished by Buyer. If such instructions are not received, Seller shall secure the least expensive transportation method consistent with good commercial practice for protection and shipment of the goods shipped.
- E. **PACKING SLIP**—Include with each shipment of goods a packing slip which displays (i) the purchase order number; (ii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable); and (iii) the quantity of items.
- F. **INVOICE**—Render a separate invoice in duplicate to Buyer's Financial Department on the day of each shipment made pursuant to this order and indicate thereon: (i) the location to which the item has been shipped; (ii) the purchase order number; (iii) the item nomenclature/description; the item part number; the item National Stock Number (where applicable); the item serial number (where applicable) and (iv) the quantity of items shipped.
- G. **TEST REPORT**—Address all Test Reports, when required, to the Materials Control Laboratory at the plant to which the goods are shipped. Test Reports must be in Buyer's possession at the time the goods are received.

TERMS AND CONDITIONS OF PURCHASE

- 1. **Specifications:** Seller shall comply with all the specifications stated in this order and (unless the goods called for by this order are standard commercial products not intended as component parts of or as equipment or as accessories for Buyer's products) with all applicable Government specifications.
- 2. **Inspection, Rejection:**
 - a. Seller shall provide and maintain, without additional charge to Buyer, an inspection system which complies with all specifications stated in this order and in the absence of such specifications, Seller shall be required to provide and maintain, without additional charge to Buyer, an inspection system, which is acceptable to Buyer, Buyer's customer and the Government and which has been approved in writing by Buyer. Seller shall tender to Buyer for acceptance only goods that have been inspected in accordance with the appropriate inspection system and have been found by Seller to be in conformity with all requirements of this order. As part of the system, Seller shall prepare records evidencing all inspections made under the system and the outcome of such inspections. These records shall be complete and made available to Buyer during performance of this order and for as long afterwards as required by this order or applicable laws and/or regulations, but in no event shall such period expire prior to (i) three (3) years after final payment or (ii) final resolution of any dispute involving the goods delivered hereunder, whichever is later. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. Such

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reviews and evaluations shall be conducted in a manner that will not unduly delay work under this order. Buyer's right of review, whether exercised or not, does not release Seller of any of its obligations of testing, inspection, quality control and associated documentation.

b. Buyer, Buyer's customer and the Government shall have the right to inspect and test the material and workmanship of all goods required under this order at all places and times including, when practicable, during the period of manufacture; and if any such inspection or test is made on the premises of Seller, Seller shall furnish, without additional charge to Buyer, all reasonable facilities and assistance for the safe and convenient performance of the inspection or test.

c. Notwithstanding (i) prior inspection, (ii) payment for, or (iii) use of the goods ordered hereunder, Buyer shall have the right to reject any of such goods which do not conform to all requirements of this order. Such right shall be exercisable within the period provided in Buyer's applicable specification, or elsewhere in this order, or in the absence thereof, within six (6) months following Buyer's receipt of the goods called for hereunder. All such rejected goods shall be returned to Seller at Seller's risk and expense, (transportation collect declared at full value, unless Seller advises otherwise), for full credit or refund (at Buyer's option) excepting, however, those goods which Buyer elects to repair at Seller's expense or to retain at an equitable reduction in price. The rejected goods returned to Seller shall not be replaced by Seller except upon written instructions from Buyer. Rejected goods shall not again be tendered for acceptance without disclosure of former rejection. Resubmitted goods must be shipped separately. Should Buyer elect to repair the nonconforming goods, all terms and conditions of this order shall remain in full force and effect as to the goods furnished by Seller. Prior inspection or test, payment for, or use of the goods ordered hereunder does not relieve Seller from any responsibility regarding defects or other failures to meet the requirements of this order which may be discovered prior to acceptance. Acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud Buyer's rights under this subparagraph shall be in addition to and shall not be deemed to diminish its rights under this paragraph or under the paragraph hereof entitled "Warranty."

d. In the event that Buyer's customer and/or the Contracting Officer charges Buyer for additional costs related to inspection or test when goods are not ready at the time specified by Seller or when prior rejection makes re-inspection or retest necessary, Buyer shall have the right to reduce the amount payable under this order such right to include, without limitation, Buyer's right to deduct or set off pursuant to Paragraph 7d. hereof.

3. Warranty:

a. Seller warrants to Buyer, its successors, assigns, customers, and users of goods sold by Buyer that all goods provided hereunder shall be (i) merchantable; (ii) new; (iii) free from defects in material and workmanship; (iv) with regard to goods designed by Seller, free from defects in design; (v) suitable for the purposes intended whether expressed or reasonably implied, (vi) in compliance with all applicable specifications, drawings, and performance requirements; and (vii) free from liens or encumbrances on title. Delivery, inspection, test, acceptance or use of or payment for the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties, and all other warranties, express or implied, shall survive delivery, inspection, test, acceptance, payment, and use. Seller agrees to correct defects in or replace any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Deliveries of corrected or replaced goods shall be accompanied by a written notice specifying that such goods are corrections or replacements. In the event that Seller fails to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Seller, shall have the right to correct or replace such goods and charge Seller for the cost incurred by Buyer in doing so, such right to include, without limitation, Buyer's right to deduct or set off pursuant to Paragraph 7d. hereof.

b. If services or technical data are to be provided by Seller hereunder, Seller warrants to Buyer that such services and/or technical data have been performed or prepared in a professional and workmanlike manner.

4. Infringement Indemnity:

a. As to the goods provided hereunder, Seller shall be liable for and shall indemnify and save Buyer and each subsequent purchaser or user thereof harmless from any infringement claim, suit or action, including proceedings under 28 U.S.C. Section 1498, alleging that the manufacture, use or sale of such goods infringes any patent trademark, copyright, semiconductor chip product mask work right or other proprietary right; except, however, that when such alleged infringement arises as a necessary consequence of Seller's compliance with specifications or designs furnished by Buyer which describe that aspect of the goods on which such alleged infringement is based, then Buyer shall be liable and shall save Seller harmless therefrom, but this exception shall not apply if the subject matter giving rise to the claim for infringement either (i) was derived from, or selected by Seller, or (ii) relates to materials or compositions, or processes relating to materials or compositions.

b. The party against whom such infringement claim is made, or such suit or action is commenced, shall promptly notify the other party in writing. The party required to indemnify under the provisions of paragraph a. hereof shall promptly assume and diligently conduct the entire defense of such alleged infringement at its own expense, provided that such party receives prompt written notice of such claim, suit, or action, if such is commenced against the other party. Insofar as its interests are affected, the other party shall have the right, at its own expense and without releasing any obligation, liability, or undertaking of the party required to indemnify, to: (i) cooperate in the defense of such claim, and (ii) with permission of the court, to intervene in any such suit or action.

c. Notwithstanding any of the above provisions, Buyer shall have the further right, at its own election, to supersede Seller in the defense of any such alleged infringement and thereafter to assume and conduct the same according to Buyer's sole discretion, in which event Seller shall be released from any obligation arising from such infringement claim, suit or action under this infringement indemnity clause. Further, Seller, if requested in writing by Buyer, shall cooperate with Buyer in Buyer's defense of any alleged infringement claim.

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5. **Software License:** Buyer is licensed to copy any software provided under this order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in this order, or in a prior written agreement directed to the software provided hereunder, Buyer's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable U.S. copyright laws and regulations, irrespective of any other license agreement including, but not limited to, any license agreement packaged with such software.
6. **Changes:**
- a. Buyer may, at any time and without notice to sureties (if any), unilaterally make changes within the general scope of this order, including, but not limited to, changes to any one or more of the following: (i) shipping or packing instructions, (ii) place of delivery, (iii) any drawings, designs, or specifications, (iv) the statement of work, (v) the method or manner of performance of the work, (vi) Buyer-furnished or Government-furnished property, facilities, equipment, materials, or services, (vii) the schedule of performance of the work, (viii) Seller's obligation to comply with any provision of the FAR and its supplements and any applicable agency regulations whether or not incorporated herein as of the date hereof. Seller shall perform any changes ordered by Buyer.
 - b. Buyer's engineering and technical personnel are not authorized to change the goods or services ordered or any provisions, drawings, designs, or specifications of this order. No change will be binding on Buyer unless issued in writing by an authorized representative of Buyer's Purchasing Department. Any other written or oral order will be treated as a change if and only if, prior to performance of such order, Buyer gives Seller written notice stating the date, circumstances, and source of the order and stating that Buyer regards such order as a change.
 - c. Subject to paragraph d. hereof, if any change under this clause causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause, however, must be submitted in writing in the form of a complete change proposal, fully supported by factual information, to Buyer's Purchasing Department not later than fifteen (15) days after the date of receipt by Seller of the change order, or within such extension of that fifteen-day period as Buyer, in its sole discretion, may grant in writing at Seller's request, provided, however, that Buyer in its sole discretion may consider any such claim regardless of when asserted, except that no claim for equitable adjustment hereunder shall be allowed if it is asserted after final payment of this order.
 - d. Notwithstanding the pendency of any claim for an adjustment submitted by Seller hereunder, Seller shall diligently proceed with the performance of the order, as directed by Buyer, and nothing herein shall be construed as relieving Seller of its obligations so to perform, including without limitation the failure of the parties to agree upon Seller's entitlement to, or the amount or nature of, any such adjustment.
 - e. Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.
7. **Assignment and Setoff:**
- a. Performance of this order shall not be assigned by the Seller in whole or in part without the prior written consent of Buyer. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of this order, and Seller shall remain liable to Buyer for full performance of its covenants, duties, liabilities and obligations hereunder.
 - b. Claims for money due or to become due to seller from Buyer arising out of this order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this order and not already paid. Any such assignment shall be subject to Buyer's rights under paragraph d. hereof. Buyer shall be under no obligation to pay such assignee unless and until Buyer shall have received written notice of the assignment from Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign; however, any payments made to a third party subsequent to Buyer's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Buyer's requirements to make any such payments hereunder.
 - c. In no event shall any documents, relating to work under this order, marked with Government security classifications such as "Top Secret," "Secret," or "Confidential," be furnished to any assignee or to any other person not otherwise authorized to receive the same without the prior written authorization of the Contracting Officer.
 - d. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
8. **Buyer - Furnished Materials, Tooling and Equipment:**
- a. All materials, tooling and equipment which Buyer is required to furnish to Seller under the provisions of this order shall be delivered in sufficient time to enable Seller to meet its delivery schedule. If such materials, tooling and equipment are not delivered to Seller in sufficient time, the resultant delay of Seller in delivering to Buyer shall be excusable. Buyer shall have no liability to Seller by reason of any delay in delivery of, or failure to deliver such materials, tooling and equipment.
 - b. Title to any materials, tooling and equipment furnished by Buyer to Seller shall remain in Buyer, Buyer's Customer, or the Government as the case may be.
 - c. Seller agrees, as a material condition of this order, that it will (i) label, identify and segregate any and all material, tooling, and equipment (hereinafter referred to as "material") delivered to Seller by Buyer in connection with this order in such fashion as to clearly identify such material as being the property of Buyer, Buyer's Customer or the Government, as the case may be, at all stages of its possession by Seller, (ii) prevent the commingling of said material with other material in the Seller's possession except in accordance with applicable buyer specifications or

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Buyer's written approval, and (iii) assumes responsibility for all taxes and risk of loss or damage with respect to said material at all times while it is in the custody, care or control of Seller, including while in the hands of carriers. Seller further agrees that a copy of this order and/or any applicable attachments and/or supplements may be filed with any cognizant governmental (federal, state or local) agency(ies) and agrees to execute such documents, including, without limitation, UCC financing statements, and take such other action as Buyer deems appropriate in order to protect Buyer's, Buyer's Customer and/or the Government's interest in and to the material delivered to Seller in connection with this order.

d. Seller shall not be required to account to Buyer for the proceeds from the sale of scrap generated during the performance of this order by the processing of material furnished by Buyer; provided, however, that Seller shall reimburse Buyer at Buyer's prices then current for any such material used by Seller in excess of the allowance, if any, set forth in this order. Upon completion or termination of this order, any of the material furnished by Buyer and not properly consumed in the performance of the order, and any tooling and equipment shall be disposed of in accordance with instructions from Buyer.

e. When Buyer furnishes any material, in whole or in part, for the manufacture of parts or assemblies, Seller shall not substitute material from any other source nor shall Seller or its subcontractors alter the material's physical or chemical properties except in accordance with applicable Buyer specifications or with Buyer's written approval

9. **Force Majeure:** Buyer may delay Seller's delivery, Buyer's acceptance or Buyer's payment for the goods when such delays are occasioned by causes beyond Buyer's control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause effecting the delay has been removed. Buyer's sole liability and Seller's sole remedy for any such delay shall be limited to Seller's direct additional costs in holding the goods or delaying performance of this order. Causes beyond Buyer's control may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

10. **Compliance With Laws:** In the performance of this order, Seller shall comply with all applicable federal, state and local laws, ordinances, rules and regulations. Seller hereby certifies that the goods called for by this order have been or will be produced in compliance with the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219) and, insofar as applicable to this order, the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45) and the Work Hours Act of 1962 (40 U.S. Code 327-332) and any amendments thereto, as well as with the provisions of any other federal law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under each and every such act. Seller agrees that this certification may be considered as the certificate contemplated by the amendment dated October 26, 1949, to the Fair Labor Standards Act of 1938.

11. Anti-Kickback / Procurement Integrity Provisions

A. ANTI-KICKBACK PROCEDURES

(a) Definitions.

"Kickback", as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person", as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company or individual.

"Prime Contract", as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor Employer", as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract", as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor" as used in this clause -

- means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

- includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

"Subcontractor Employee", as used in this clause, means any officer, partner, employee, or agent of a subcontractor,

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) providing or attempting to provide or offering to provide any kickback;

(2) soliciting, accepting or attempting to accept any kickback; or

(3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

(c) (1) Seller shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph

(b) above in its own operations and direct business relationships.

(2) When Seller has reasonable grounds to believe that a violation described in paragraph (b) above may have occurred, Seller shall promptly report in writing the possible violation. Such reports shall be made to buyer and to the inspector general of the government

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contracting agency responsible for the prime contract, or the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) Seller shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) above.

(4) Regardless of the contract tier at which a kickback was provided, accepted or charged under the contract in violation of paragraph (b) above, Buyer may-

(i) offset the amount of the kickback against any monies owed by the Buyer under this contract; and/or

(ii) direct that the Seller withhold from sums owed its subcontractor, the amount of the kickback. Buyer may order that monies withheld under this subparagraph be paid over to Buyer unless Buyer has already offset those monies under subparagraph (i) above. In the latter case, Seller shall notify Buyer when the monies are withheld.

(5) Seller agrees to incorporate the substance of this clause, including this paragraph (5), in all subcontracts.

B. SELLER'S REPRESENTATION, WARRANTY AND INDEMNIFICATION OF BUYER

(a) Definitions:

The terms "Kickback", "Subcontract", "Subcontractor", and "Subcontractor Employee" as used in this clause shall have the same meanings as those set forth in the clause entitled "ANTI-KICKBACK PROCEDURES".

(b) Seller's Representation and Warranty to Buyer

Seller represents and warrants to Buyer that neither Seller (including any of its officers, partners, employees or agents) nor any Subcontractor below Seller or Subcontractor employee has:

(1) provided or attempted to provide or offered to provide any kickback;

(2) solicited, accepted, or attempted to accept any kickback; or

(3) included, directly or indirectly, the amount of any kickback in the price applicable to this purchase order or in the subcontract price charged by any subcontractor to a higher tier subcontractor.

(c) Seller's Indemnification of Buyer

In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including, without limitation, Buyer's costs, attorney's fees, or any fines or penalties assessed against Buyer, resulting from a violation of the Anti-Kickback Act of 1986 by Seller (including any of its officers, partners, employees, or agents); or by any Subcontractor below Seller or Subcontractor employee.

C. PROCUREMENT INTEGRITY INDEMNIFICATION: If the price of Buyer's contract with its customer is reduced for a violation of the procurement integrity provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 423) and if the violation is by Seller or otherwise attributable to Seller, then Seller will indemnify and hold Buyer harmless. This indemnity will survive close-out of this purchase order.

12. FAR and DOD FAR Supplement Clauses: (applicable if a Government prime contract number is indicated on the face of the Order)

The following FAR and Department of Defense FAR Supplement (DFARS) clauses as in effect, and as modified by Federal Acquisition Circulars and Defense Acquisition Circulars respectively, as of the date of the prime contract(s) appearing on the order, are hereby incorporated by reference and made a part hereof:

(a) FAR 52.203-1 "Officials Not To Benefit",

FAR 52.203-3 "Gratuities",

FAR 52.203-5 "Covenant Against Contingent Fees", in which "Government" means Buyer in paragraph (a).

FAR 52.203-6 "Restrictions on Subcontractor Sales to the Government,"

FAR 52.203-11 "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions"

FAR 52.204-2 "Security Requirements,"

FAR 52.208-1 "Required Sources for Jewel Bearings and Related Items,"

DFARS 52.208-7000 "Required Sources for Miniature and Instrument Ball Bearings,"

DFARS 52.208-7001 "Required Sources for Precision Components for Mechanical Time Devices,"

DFARS 52.208-7002 "Required Sources for High-Purity Silicon,"

DFARS 52.208-7003 "Required Sources for High Carbon Ferrochrome,"

DFARS 52.208-7006 "Required Sources for Antifriction Bearings,"

DFARS 52.209-7000 "Acquisition from subcontractors subject to on-site inspection under the Intermediate Range Nuclear Forces (INF) Treaty"

FAR 52.210-5 "New Material", in which "Contracting Officer" means Buyer's purchasing representative and "Government" means Buyer in the last two sentences of the clause.

FAR 52.210-7 "Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property,"

FAR 52.212-8 "Defense Priority and Allocation Requirements,"

FAR 52.215-26 "Integrity of Unit Prices" less paragraph (c).

FAR 52.215-39 "Reversion or Adjustment of Plans for Postretirement Benefits Other than Pensions (PRB)"

DFARS 52.215-7000 "Aggregate Pricing Adjustment,"

FAR 52.222-1 "Notice to the Government of Labor Disputes," in which "Contracting Officer" means Buyer's purchasing representative.

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FAR 52.222-4 "Contract Work Hours and Safety Standards Act - Overtime Compensation - General" (paragraphs (a) through (d) only).
 FAR 52.222-21 "Certification of Non-Segregated Facilities." Such certification shall be effective for all bids and orders issued by Buyer for a period of one (1) year after Seller's acceptance of this order.
 FAR 52.222-26 "Equal Opportunity," paragraphs (b)(1) through (b)(11) only,
 FAR 52.222-35 "Affirmative Action for Special Disabled and Vietnam Era Veterans"
 FAR 52.222-36 "Affirmative Action for Handicapped Workers"
 FAR 52.222-41 "Service Contract Act of 1965, as Amended"
 FAR 52.223-3 "Hazardous Material Identification and Material Safety Data,"
 FAR 52.225-11 "Certain Communist Areas,"
 DFARS 52.225-7001 "Buy American Act and Balance of Payments Program,"
 DFARS 52.225-7002 "Qualifying Country Sources as Subcontractors,"
 DFARS 52.225-7005 "Buy American - Trade Agreements - Balance of Payments Program Certificate,"
 DFARS 52.225-7006 "Buy American Act. Trade Agreements Act. and the Balance of Payments Program,"
 DFARS 52.225-7011 "Preference for Domestic Specialty Metals (Major Programs),"
 DFARS 52.225-7013 "Preference for Domestic Hand or Measuring tools."
 DFARS 52.225-7026 "Restriction on Contracting with Toshiba Corporation and Kongsberg Vapenfabrik."
 FAR 52.227-8 "Reporting of Foreign Royalties."
 FAR 52.227-9 "Refund of Royalties,"
 FAR 52.227-10 "Filing of Patent Application - Classified Subject Matter" (if patent application contains classified subject matter).
 DFARS 52.227-7013 "Rights in Technical Data and Computer software" with Alternate I "Notice of Certain Limited Rights"
 DFARS 52.227-7018 "Restrictive Markings on Technical Data,"
 DFARS 52.227-7028 "Requirement for Technical Data Certification"
 DFARS 52.227-7029 "Identification of Technical Data,"
 DFARS 52.227-7030 "Technical Data - Withholding of Payment,"
 DFARS 52.227-7032 "Rights in Technical Data and Computer Software (Foreign),"
 DFARS 52.237-7036 "Certification of Technical Data Conformity,"
 DFARS 52.227-7037 "Validation of Radioactive Markings on Technical Data,"
 DFARS 52.228-7006 "Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles,"
 DFARS 52.228-7007 "Safety Precautions for Ammunition and Explosives,"
 FAR 52.229-3 "Federal, State, and Local Taxes", in which "Government" means Buyer and "Contracting Officer" means Buyers purchasing representative.
 FAR 52.229-5 "Taxes - Contracts Performed in U.S. Possessions or Puerto Rico,"
 FAR 52.230-2 "Cost Accounting Standards"
 FAR 52.230-3 "Disclosure and Consistency of Cost Accounting Practices"
 FAR 52.230-5 "Administration of Cost Accounting Standards"
 DFARS 52.231-7000 "Supplemental Cost Principles,"
 DFARS 52.235-7002 "Recovery of Nonrecurring Costs on Commercial Sales,"
 DFARS 52.243-7001 "Pricing of Adjustments,"
 FAR 52.245-2 "Government Property (Fixed Price Contracts)," in which

- "Contracting Officer" means Buyer's purchasing representative.
- "Government" means Buyer except:
 - 1) the second time it appears in paragraph (b)(1)(ii), and
 - 2) in paragraph (c)(1).
- "Government" means Government or Buyer:
 - 1) in paragraph (f) and in the following phrase "its" becomes "their," and
 - 2) in paragraph (j) and subparagraph (i)(1).
- The fourth sentence of paragraph (h) is changed to read. "Neither the Government nor the Buyer shall be liable..."

 FAR 52.245-17 "Special Tooling" in which "Contracting Officer" shall be deemed to refer to Buyer's authorized representative and the term "Government" shall be deemed to refer to Buyer except in paragraphs (e)(1), (i)(1) and (i)(4) where the term will be interpreted as referring to either the Government or Buyer.
 FAR 52.245-18 "Special Test Equipment,"
 FAR 52.246-16 "Responsibility For Supplies,"
 FAR 52.247-63 "Preference for U.S. - Flag Air Carriers,"
 FAR 52.247-64 "Preference for Privately Owned U.S.-Flag Commercial Vessels."
 DFARS 52.247-7203 "Transportation of Supplies by Sea"
 (b) If a purpose of this order is the conduct of experimental, developmental or research work,
 FAR 52.227-11 "Patent Rights - Retention by one Contractor (Short Form),"

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FAR 52.227-12 "Patent Rights - Retention by the Contractor (Long Form)," "Excepting Paragraph (o),"
 FAR 52.227-13 "Acquisition by the Government (Long Form),"
 DFARS 52.227-7034 "Patents - Subcontracts" - depending on which clause is required by the prime contract under which this order is placed.

- (c) If this order is for more than \$2,500,
 FAR 52.222-36 "Affirmative Action for Handicapped Workers,"
- (d) If this order is for \$10,000 or more,
 FAR 52.222-35 "Affirmative Action for Special Disabled and Vietnam Era Veterans"
 FAR 52.222-37 "Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era,"
- (e) If this order is for more than \$10,000,
 FAR 52.214-26 "Audit Sealed Bidding,"
 FAR 52.215-1 "Examination of Records by Comptroller General," excluding paragraph (c),
 FAR 52.215-2 "Audit-Negotiation" (excluding the first part of the first sentence up to and including the phrase "combination of these")
 FAR 52.219-8 "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns,"
 FAR 52.222-20 "Walsh-Healey Public Contracts Act,"
- (f) If this order is for more than \$25,000,
 FAR 52.219-13 "Utilization of Women-Owned Small Businesses",
 FAR 52.220-3 "Utilization of Labor Surplus Area Concerns,"
 FAR 52.227-1 "Authorization and Consent"
 FAR 52.227-2 "Notice and Assistance Regarding Patent and Copyright Infringement,"
- (g) If this order is for more than \$100,000,
 DFARS 52.204-7005 "Overseas Distribution of Defense Subcontracts," excluding paragraph (c).
 FAR 52.214-28 "Subcontractor Cost or Pricing Data - Modifications Sealed Bidding,"
 FAR 52.215-24 "Subcontractor Cost or Pricing Data,"
 FAR 52.215-25 "Subcontractor Cost or Pricing Data - Modifications,"
 FAR 52.223-1 "Clean Air and Water Certification," wherein Seller certifies that facilities used in performance of this order are not listed on the Environmental Protection Agency List of Violating Facilities.
 FAR 52.223-2 "Clean Air and Water,"
 FAR 52.248-1 "Value Engineering," in which "Contracting Officer" means Buyer's purchasing representative except in paragraph (j) sentence 3. "Government" means Buyer in paragraphs (e)(1), (e)(2), (g)(4) and (i)(4), and means Government and Buyer in paragraph (m), sentence 1 and in sentence 2 of the legend. Replace the share percentage figures in paragraphs (f) and (j) with those the parties agree upon.
- (h) If this order is for more than \$500,000,
 FAR 52.219-9 "Small Business and Small Disadvantaged Business Subcontracting Plan." Seller shall submit a subcontracting plan in compliance with such clause. This clause does not apply to small business concerns.
 FAR 52.220-4 "Labor Surplus Area Subcontracting Program"
- (i) Optional clauses
 The following clauses apply if indicated on the face of the order.
 (A1) FAR 52.224-2 "Privacy Act"
 (A2) FAR 52.225-10 "Duty-Free Entry" (in Paragraph (e), the terms "Government" and "Contracting Officer" do not change)
 (A3) DFARS 52.225-7004 "Identification of Expenditures in the United States"
 (A4) DFARS 52.225-7007 "Supplies to be Accorded Duty-Free Entry" (for solicitation purposes only)
 (A5) DFARS 52.225-7008 "Duty-Free Entry - Qualifying Country End Products and Supplies"
 (A6) DFARS 52.225-7012 "Preference for Domestic Specialty Metals"
 (A7) DFARS 52.225-7014 "Duty-Free Entry - Additional Provisions"
 (A8) DFARS 52.227-7022 "Government Rights (Unlimited)"
 (A9) DFARS 52.227-7023 "Drawings and Other Data to Become Property of Government"
 (A10) DFARS 52.227-7026 "Deferred Delivery of Technical Data or Computer Software"
 (A11) DFARS 52.227-7027 "Deferred Ordering of Technical Data or Computer Software"
 (A12) DFARS 52.235-7004 "Frequency Authorization"
 (A13) FAR 52.228-5 "Insurance Work on a Government Installation"
 (A14) DFARS 52.246-7001 "Warranty of Data"
 (A15) FAR 52.230-2 "Cost Accounting Standards"
 (A16) FAR 52.230-3 "Disclosure and Consistency of Cost Accounting Practices"
 (A17) FAR 52.230-5 "Administration of Cost Accounting Standards"
 (A18) FAR 52.230-6 "Consistency in cost accounting practices." In addition to any other remedies provided by law or under this order, Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense (including profit) if Buyer is

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subjected to any liability as the result of a failure of the Seller or its lower-tier subcontractors to comply with the requirements of this clause.

(A19) FAR 52.232-16 "Progress Payments"

(A20) FAR 52.246-23 "Limitation of Liability" in which

- The terms "Contractor" and "Contractor's" shall mean "Seller" and "Seller's" respectively.
- The term "acceptance" shall mean the acceptance by the U.S. Government of the end items in which are incorporated the goods delivered under this order.

This limitation shall not be construed to impose any obligation or liability on Buyer not to relieve Seller of any liabilities or obligations which Seller may have to Buyer under this order.

(A21) FAR 52.246-24 "Limitation of Liability - High Value Items" in which

- the terms "Contractor" and "Contractor's" shall mean "Seller" and "Seller's" respectively.
- the term "acceptance" shall mean the acceptance by the U.S. Government of the end items in which are incorporated the goods delivered under this order.

Insert the following preamble before paragraph (a) of the clause: "This clause shall apply only to those items identified in this order as being subject to the clause".

(A22) FAR 52.246-25 "Limitation of Liability - Services"

Wherever necessary to make the context of the FAR and DFARS clauses applicable to this order, the term "Contractor" shall mean Seller, the term "Contract" shall mean this order, and the term "Government," "Contracting Officer" and equivalent phrases shall mean Buyer and/or buyer's purchasing representative, except the terms "Government" and "Contracting Officer" do not change: (1) in the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property," (2) in the patent clauses incorporated herein (3) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract "Contracting Officer" or his duty authorized representative, (4) when title to property is to be transferred directly to the Government, (5) when access to proprietary financial information or other proprietary data is required except as provided in paragraph 13 hereof, and (6) where specifically modified herein. If there is a conflict or addition to a clause in effect on the effective date of this order and a clause of the prime contract, the prime contract clause shall govern.

13. Inspection of Records: Seller agrees that its books, records, and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of any Department of the United States Government. Additionally, if this order is a time and material or construction order or provides for the payment of any amounts prior to the completion hereof, including, without limitation, progress payments, Seller agrees that its books, records and its plant, or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of Buyer notwithstanding any other provision herein to the contrary.

14. Seller's Financial Status: This order shall automatically terminate without any action by Buyer if:

- a. Seller shall consent to the appointment of a receiver, trustee, liquidator, assignee, custodian, sequestrator or similar official of itself or of all or a substantial part of its property, or Seller shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or
- b. Seller shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a case under any chapter of the Federal Bankruptcy Code or an answer admitting the material allegations of a petition filed against Seller in any such case, or an order for relief shall be entered against Seller in any such case, or Seller shall by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporation, or providing for an agreement, composition, extension or adjustment with its creditors; or
- c. An order, judgment or decree shall be entered in any proceeding by any court appointing, without the consent of Seller, a receiver, trustee, liquidator, assignee, sequestrator or similar official of Seller or of all or any substantial part of its property, or sequestering all or any substantial part of the property of Seller, and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of ten (10) days after the date of entry thereof; or
- d. A petition against Seller in a case under any chapter of the Federal Bankruptcy Code or any other bankruptcy or insolvency laws as now or hereafter in effect shall be filed and shall not be withdrawn or dismissed within ten (10) days thereafter.

15. Price Reduction for Defective Cost or Pricing Data (applicable if a Government prime contract number is indicated on the face of the Order)

- a. In the event Buyer's customer(s) (including the Government) makes a determination pursuant to the clause(s) in, or required to be in, Buyer's contract(s) related to the Truth in Negotiations Act ("Act") or its implementing regulations, that any cost, price or fee in Buyer's contract(s) should or will be reduced because:
 - i. Seller furnished cost or pricing data that were not complete, accurate and current as certified, or as required to be certified, in the Seller's Certificate of Current Cost or Pricing Data; or
 - ii. A subcontractor of Seller furnished cost or pricing data that were not complete, accurate and current as certified, or as required to be certified, in the subcontractor's Certificate of Current Cost or Pricing Data; or

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- iii. A subcontractor or prospective subcontractor of Seller furnished cost or pricing data that were required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by Seller but that were not complete, accurate and current as of the date certified, or as required to be certified, in the Seller's Certificate of Current Cost or Pricing Data; or
- iv. Seller or a subcontractor or prospective subcontractor of Seller furnished any data not within (i), (ii) or (iii) above (i.e., all data submitted at any and all times whether or not certified), that were not complete, accurate, or current as submitted; or
- v. Seller or a subcontractor or prospective subcontractor of Seller failed to furnish any cost or pricing data, including any requested data, that were required under the Act or its implementing regulations;

then, at any time following such determination, the sums paid or payable to Seller under this order may, at Buyer's sole option, be reduced in the amount by which the sums received or receivable by Buyer from its customer(s) (including, but not limited to, the allocable share of Buyer's indirect costs and profit or fee) are reduced based upon such determination, and this order shall be modified in writing as may be necessary to reflect such reduction. At Buyer's election, Buyer may, pursuant to paragraph 7 d. hereof, set off against any amounts due or to become due to the Seller from Buyer, whether or not under this order, all amounts by which this order has been reduced as set forth above. For purposes of this subparagraph, a "determination" by Buyer's customer means a final decision of a Government contracting officer and/or the formal assertion of a claim by a non-Governmental customer of Buyer and/or the withholding of money from Buyer by a customer based on an alleged failure of Buyer or its subcontractors to comply with the Act and/or the agreement by Buyer to a reduction in any cost, price, or fee of its contract(s) as the result of an alleged failure to comply with the Act.

b. Appeal. If an appealable decision is made by a contracting officer of the United States relating to cost or pricing data required to be submitted or actually submitted by Seller or a subcontractor of Seller, such decision (or portions thereof as relate to Seller) shall be conclusive upon Seller, provided that Seller, in the discretion of Buyer, is given the opportunity to appeal such decision in the name of Buyer and fails to do so. Any such appeal brought by Seller in the name of Buyer shall be at the sole expense of Seller. Seller shall be solely responsible for the prosecution of such appeal, including, but not limited to, the presentation of all pleadings, documents, evidence, facts, data and testimony in connection therewith. Further, Seller shall be responsible for providing any and all information requested by Buyer to verify, support, or provide any and all certifications required by the Contract Disputes Act of 1978, 41 U.S.C. Section 601 *et seq.*, to perfect any such appeal. If Seller is given the opportunity to so appeal and elects to do so, Seller shall, upon Buyer's written request, provide to Buyer advance copies of papers to be filed in such appeal and such other information, consultation and opportunity to participate in the appeal as Buyer may reasonably request. As used in this subparagraph b, the term "appeal" shall include any and all proceedings taken by Seller under this subparagraph before a Board of Contract Appeals and any Federal court. Seller shall be conclusively bound by any decision of any such Board of Contract Appeal or Federal Court.

c. Indemnification. In addition to any other remedies that Buyer may have, Seller shall indemnify and hold harmless Buyer from and against any loss or damage, including Buyer's costs and attorney's fees, resulting from any and all determinations by Buyer's customer(s) as set forth in subparagraph a. above or from Seller's failure otherwise to comply with the clauses incorporated by reference in this order.

16. Termination for Default:

- a. Buyer may by written notice terminate the whole or any part of this order for default in either of the following circumstances:
 - (i) If Seller fails to deliver the supplies or perform the services required by this order within the time specified herein, or any extension thereof granted by Buyer in writing; or
 - (ii) If Seller fails to perform any of the other provisions of this order or so fails to make progress as to endanger performance of this contract in accordance with its terms and Seller does not cure such failure to Buyer's reasonable satisfaction within a period of ten (10) days after receipt of notice from Buyer specifying such failure.
- b. In the event Buyer terminates this order in whole or in part as provided in this clause, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods, *provided, however,* that Seller shall continue the performance of this contract to the extent not terminated under the provisions of this clause.
 - i. Except with respect to defaults of vendors or subcontractors, Seller shall not be liable for any excess costs if the failure to perform this order arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; and in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a vendor or subcontractor to Seller, and if such default arises out of causes beyond the control of both the Seller and the vendor or subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods to be furnished by the vendor or subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. No cause shall constitute a basis for excusable delay unless Seller has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.
 - ii. If this order is terminated under this clause, Buyer, in addition to any other rights provided in this section, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (i) any completed goods, and (ii) any partially completed goods and materials, parts, components, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "contract materials") as the Seller has specifically produced or specifically acquired for the performance of such part of this order as has been terminated; and the Seller shall upon direction of Buyer, protect and preserve property in the

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possession of Seller in which Buyer has an interest. Payment for completed goods delivered or rendered to and accepted by Buyer shall be at the order price. Payment for contract materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed goods or contract materials such sums as Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

iii. If, after notice of termination of this contract under this provision it is determined for any reason that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 17 entitled "Termination for Convenience."

c. As used in paragraph (b) of this clause, the terms "subcontractor" and "subcontractors" means subcontractor(s) at any tier and the terms "vendor" and "vendors" mean vendor(s) at any tier.

17. Termination for Convenience

a. The performance of work under this order may be terminated, in whole or from time to time in part, by Buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to Seller of a Notice of Termination specifying the extent to which performance of work under the order is terminated, and the date upon which such termination becomes effective.

b. After receipt of a Notice of Termination and except as otherwise directed by Buyer, Seller shall:

- i. stop work under the order on the date and to the extent specified in the Notice of Termination;
- ii. place no further orders or suborders for materials, services, or facilities except as may be necessary for completion of such portions of the work under the orders as may not be terminated;
- iii. terminate all orders and suborders to the extent that they relate to the performance of any work terminated by the Notice of Termination;
- iv. assign to Buyer, in the manner, and to the extent directed by Buyer all of the right, title and interest of Seller under the orders or subcontracts so terminated;
- v. settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of Buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- vi. transfer title and deliver in the manner, to the extent, and at the times directed by Buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the order had been completed, would be required to be furnished to Buyer;
- vii. use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by Buyer, any property of the types referred to in (vi) above; provided, however, that Seller (A) shall not be required to extend credit to any purchaser and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by Buyer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Buyer to Seller under this order or shall otherwise be credited to the price or cost of the work covered by this order or paid in such other manner as Buyer may direct;
- viii. complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- ix. take such action as may be necessary or as Buyer may direct for protection and preservation of the property related to this order which is in the possession of Seller and in which Buyer or the Government has or may acquire an interest.

c. After receipt of a Notice of Termination, Seller shall submit to Buyer his termination claim, in the form and with the certification prescribed by Buyer. Such claim shall be submitted promptly, but not later than four (4) months from the effective date of termination, unless one or more extensions in writing are granted by Buyer, upon request of Seller made in writing within such four-month period or authorized extensions thereof. Upon failure of Seller to submit his termination claim within the time allowed, Buyer may determine, on the basis of information available to him, the amount, if any, due to Seller in respect to the termination; however, if Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such four-month period or any extension thereof. After Buyer has made a determination under this paragraph, he shall pay the Seller the amount so determined and such determination shall be final.

d. Subject to the provisions of paragraph (c) hereof, Seller and Buyer may agree upon the whole or any part of the amount or amounts to be paid to Seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and Buyer shall pay the agreed amount or amounts; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total order price as reduced by the amount of payments otherwise made and as further reduced by the order price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to Seller in the event of the failure of Seller and Buyer to agree upon the whole amount to be paid to Seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Seller pursuant to this paragraph (d).

e. In the event of the failure of Seller and Buyer to agree as provided in paragraph (d) upon the whole amount to be paid to Seller by reason of the termination of work pursuant to this clause, Buyer shall pay to Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

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- i. for completed supplies or services accepted by Buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the order, appropriately adjusted for any saving of freight or other charges;
- ii. the total of
 - (A.) the cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies or services paid or to be paid for under (i) above; and
 - (B.) the cost of settling and paying claims arising out of the termination of work under suborders or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the suborder prior to the effective date of the Notice of Termination of work under this order, which amount shall be included in the cost on account of which payment is made under (A) above; and
 - (C.) a sum, as profit on (A) above, determined by Buyer pursuant to section 49.202 of the Federal Acquisition Regulation (FAR) in effect as of the date of execution of this order, to be fair and reasonable; provided, however, that if it appears that Seller would have sustained a loss on the entire order had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- iii. the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the order and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this order. The total sum to be paid to Seller under (i) and (ii) above shall not exceed the total order price reduced by the amount of payments otherwise made and as further reduced by the order price of work not terminated. Except for normal spoilage and except to the extent that Buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Seller under (i) and (ii)(A) above the fair value as determined by Buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer or to a purchaser pursuant to paragraph (b)(vii).
- f. The obligation of Buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to Seller applicable to the terminated portion of this order, (ii) any claim which Buyer may have against Seller, in connection with this order, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by Seller or sold, and not otherwise recovered by or credited to the Buyer.
- g. If the termination hereunder be partial, Seller may file with Buyer a claim for an equitable adjustment in the price or prices specified in the order for the work in connection with the continued portion not terminated by the Notice of Termination, and an appropriate equitable adjustment shall be made in such price or prices. Any claim by Seller for an equitable adjustment under this clause must be asserted within forty-five (45) days from the effective date of the termination notice, unless an extension is granted in writing by Buyer.
- h. Buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by Seller in respect to the terminated portion of the order, whenever in the opinion of Buyer the aggregate of such payments shall be within the amount to which Seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by Seller to Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C App. 1215(b)(2) for the period from the date such excess payment is received by Seller to the date on which such excess is repaid; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in Seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by Buyer by reason of the circumstances.
- i. For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by Buyer to Seller shall be determined in conformity with the policies and principles set forth in Part 49 of the FAR in effect at the date of this order. Unless otherwise provided for in this order, or by applicable statute, Seller shall - from the effective date of termination until the expiration of three years after final settlement under the order - preserve and make available, without any direct charge, to the Buyer, Buyer's customer, and to the Government at all reasonable times at the office of Seller, all his books, records, documents, and other evidence bearing on the costs and expenses of Seller under this order and relating to the work terminated hereunder, or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

18. Stop Work Order

- a. Buyer may, at any time, by written order to Seller, require Seller to stop all, or any part, of the work called for by this purchase order for a period of 90 days after the order is delivered to Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Seller, or within any extension of that period to which the parties shall have agreed. Buyer shall either-
 - i. Cancel the stop-work order; or
 - ii. Terminate the work covered by the order as provided in the Termination for Default, or the Termination for Convenience, clause of this purchase order.

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- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work. Buyer shall make an equitable adjustment in the delivery schedule or purchase order price, or both, and the purchase order shall be modified, in writing, accordingly, if-
 - i. The stop-work order results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this purchase order; and
 - ii. Seller asserts a claim for the adjustment within 15 days after the end of the period of work stoppage; provided, that, if Buyer decides the facts justify the action. Buyer may receive and act upon the claim asserted at any time before final payment under this purchase order.
- c. If a stop-work is not canceled and the work covered by the order is terminated for the convenience of Buyer, Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement,
- d. If a stop-work is not canceled and the work covered by the order is terminated for default, Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

19. Certificates

Seller shall furnish to Buyer or directly to the Government upon request of Buyer any certificate required to be furnished by any provision of this order (including the FAR clauses incorporated or set out herein) and any certificate required by any future law, ordinance, or regulation with respect to Seller's compliance with the terms and provisions of the FAR or such laws, ordinances, or regulations. As used in this paragraph, the word "certificate" shall include any plan or course of action or recordkeeping function, as, for example, the small business subcontracting plan required by FAR Section 52.219-9.

20. Indemnification:

- a. Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, its parent and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against Buyer, or such other parties by or on account of any person, persons, or entities, or on account of any injuries received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material, workmanship, services, or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of defects in the design, manufacture or materials used in the goods, or negligence in the manufacture or installation of the goods or any other services supplied hereunder.
- b. Notwithstanding the above provision, Buyer shall have the right, at its own election, and without releasing any obligation, liability, or undertaking of Seller to indemnify Buyer hereunder, to:
 - i. cooperate in the defense of such claim
 - ii. with permission of the court, to intervene in any such suit or action, and
 - iii. supersede Seller in the defense of any such claims, suits, actions, or legal proceedings.
- c. Seller further agrees to:
 - i. promptly pay the settlement or judgment pertaining to all such claims, suits actions or legal proceedings; to hold harmless and indemnify Buyer therefrom; and
 - ii. promptly pay the costs of attorneys' fees or other expenses incurred in any such defense either by Seller and/or Buyer, and to hold harmless and indemnify Buyer therefrom.
- d. Seller agrees that in any instance where such claims in any way affect Buyer's interests under this order or otherwise, Seller shall not consummate any settlement without Buyer's prior written consent.
- e. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination of this order.

21. Confidential Disclosure:

- a. Information Furnished by Buyer - Information and ideas disclosed to Seller in connection with this order at any time in any form (including without limitation, orally, or in drawings, specifications, software, tools, gauges or goods provided hereunder) which Buyer considers proprietary and so indicates to Seller at the time of disclosure or within a reasonable time thereafter ("proprietary information" hereinafter), are entrusted to Seller only for use on behalf of Buyer. Seller shall keep proprietary information in confidence and shall neither use (other than in performance under this order) nor disclose such proprietary information except as authorized in writing by Buyer. On completion of this or all subsequent related orders (as appropriate), Seller shall deliver to Buyer or destroy to Buyer's satisfaction all material (including without limitation, documents, software, tools and goods which may be defective, partially completed, or completed) embodying proprietary information, unless otherwise instructed by Buyer. Any such material disposed of by Seller at any time other than by delivery to Buyer shall be altered to such an extent that prevents discovery of any proprietary information embodied therein. However, Seller shall not be liable for use or disclosure of any proprietary information which is shown by clear and convincing proof to either have been known to the Seller at the time of receipt from Buyer or to be in the public domain.
- b. Information Developed by Seller - Information and ideas developed by Seller under or in the course of performing this order for Buyer shall be owned by and disclosed to Buyer and if Buyer so indicates to Seller, such information and ideas shall be treated as proprietary information in accordance with the provisions of paragraph a. hereof.

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c. The restrictions set forth above do not apply to use by the Subcontractor on other Government contracts of data, tooling or designs which the Government owns or has right to use without restrictions and which were forwarded to the Subcontractor by Buyer.

d. Tools & Materials - Notwithstanding any other provisions of this Purchase Order, upon prior written notice to Buyer and to the extent such use will not interfere with Seller's performance of purchase orders with Buyer in effect at the time, Seller with the U.S. Government's authorization, may use on other contracts all buyer furnished designs, drawings, special tooling, equipment, material, engineering data or other technical or proprietary information, etc., which the U.S. Government owns, or has the right to authorize the use thereof All such materials, tools and equipment shall be satisfactorily marked, segregated or otherwise clearly identified by seller as property of the buyer and shall be kept by Seller in good condition and repair and shall be returned by Seller at Buyer's request in as good a condition as when received, reasonable wear and tear excepted, except to the extent that any such materials, tools and equipments that have been incorporated in supplies furnished to Buyer under this order or have been properly consumed in the normal performance of work thereunder, Buyer shall have the right to remove its materials, tools and equipments upon receivership, bankruptcy or default of Seller upon termination of this order. All risks of loss or damage to such materials, tools and equipment shall be upon Seller until the materials, tools, and equipments have been re-delivered to Buyer.

- 22. **Price Warranty:** Seller warrants that the prices for the articles sold Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such articles during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.
- 23. **Delivery:** Time is of the essence of this order, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Substitutions will not be accepted. The supplies must be delivered by the date(s) specified, but must not be delivered earlier than two (2) weeks prior to such date(s) unless prior approval for an earlier delivery is given in writing by Buyer
- 24. **Duty to Proceed:** Except as expressly authorized in writing by the Buyer, no failure of Seller and Buyer to reach any agreement provided for by the terms of this order shall excuse the Seller from proceeding diligently with the performance of this order,
- 25. **Interpretation:** It shall be the obligation of Seller to exercise due diligence to discover and to bring to the attention of Buyer at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts herein or in or between any specifications, drawings, or other documents attached hereto or incorporated by reference herein. Ambiguities, inconsistencies, or conflicts in this order will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting,
- 26. **Partial Invalidity:** If in any instance any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with their terms.
- 27. **Waiver:** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any such terms, conditions, or privileges or any other terms, conditions, or privileges, whether of the same or similar type,
- 28. **Attorney Fees:** In the event Buyer should bring an action for enforcement of the terms and conditions of this order, Seller agrees that Buyer shall be entitled to award of its reasonable attorney's fees and court costs associated with such enforcement proceedings.
- 29. **Applicable Law and Forum:**

This order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws of the state from which the Buyer's order is issued. Buyer may, but is not obligated to, bring any action or claim relating to or arising out of this order in the appropriate state or federal court in Buyer's state, and Seller hereby irrevocably consents to personal jurisdiction in any such court, hereby appointing the Secretary of State of Buyer's state as agent for receiving service of process. Any action or claim by Seller with respect hereto shall also be brought in such appropriate state or federal court in Buyer's state, if Buyer so elects. Accordingly, Seller shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim outside of Buyer's state if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid.
- 30. **Captions:** Captions, as used herein, are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such captions may refer.
- 31. **Cumulative Remedies:** The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.

32. COUNTERFEIT PARTS PREVENTION CLAUSE

a. Definitions for purposes of this contract:

- (i) "Counterfeit Parts" shall mean a part, component, module, or assembly whose origin, material, source of manufacture, performance, or characteristics are misrepresented. This term includes, but is not limited to, (A) parts that have been (re)marked to disguise them or falsely represent the identity of the manufacturer, (B) defective parts and/or surplus material scrapped by the original manufacturer, and (C) previously used parts pulled or reclaimed and provided as "new".

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- (ii) As used herein, "Authentic" shall mean (A) genuine; (B) from the legitimate source claimed or implied by the marking and design of the product offered; and (C) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.
 - (iii) "Independent Distributor" shall mean a person, business, or firm that is neither authorized nor franchised by and Original Component Manufacturer ("OCM") to sell or distribute the OCM's products but which purports to sell, broker, and/or distribute such OCM products. Independent Distributors are also referred to as unfranchised distributors, unauthorized distributors, and/or brokers.
- b. Seller represents and warrants that only new and authentic materials are use in products required to be delivered to Buyer and that the work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by Buyer. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturers ("OEMs")/OCMs or through the OEM's/OCM's authorized distribution chain. Seller must make available to Buyer at Buyer request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by an Buyer Procurement Representative. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. Buyer approval of Seller request(s) does not relieve Seller's responsibility to comply with all Contract requirements, including the representations and warranties in this paragraph.
- c. Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification and Buyer approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM's/OCM's authorized distribution chain. Seller shall provide copies of such documentation for its system for Buyer inspection upon Buyer request.
- d. If the SELLER is providing electronic components/devices only, the following certification applies:
Certification of Origin of Product:
 Acceptance of this contract constitutes confirmation by the SELLER that it is either the Original Equipment Manufacturer (OEM), Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. SELLER further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM is available upon request. If the SELLER is not the OEM/OCM or a franchised or authorized distributor, the SELLER confirms by acceptance of this Contract that each product supplied to Buyer has been procured from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM. The supplier further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon Buyer request.
- e. SELLER shall flow the requirements of the entirety of this Counterfeit Parts Retention Clause; all paragraphs and subparagraphs contained herein to its subcontractors and suppliers at any tier for the performance of this Contract.

FAR MANDATED FLOWDOWN CLAUSES FOR GOVERNMENT CONTRACTS AS OF FAC 2001-3, DECEMBER 27, 2001

Clause	Title	Effective Date	Application
22.805	Procedures	FEB 1999	Preaward clearances for contracts and subcontracts of \$10 million or more (excluding construction).
52.203-3	Gratuities	APR 1984	All subcontracts except for those personal services and those between military and foreign governments.
52.203-6	Restrictions on Subcontractor Sales to the Government	JUL 1995	The contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts, which exceed \$100,000.
52.203-7	Anti-Kickback Procedures	JUL 1995	All subcontracts which exceed \$100,000 but paragraph (c)(1).
52.20-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	APR 1991	All subcontracts, certification required only over \$100,000.

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52.203-12	Limitation to Payments to Influence Certain Federal Transactions	JUN 1997	All subcontracts expected to exceed \$100,000.
52.204-2	Security Requirements	AUG 1996	When a subcontract may be require access to classified information unless FAR 4.404 (d) applies.
52.208-8	Helium Requirement Forecast and Required Sources for Helium	JUN 1997	The contractor shall insert this clause, including paragraph (c), in any subcontract that involves furnishing of a major helium requirement.
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items	AUG 2000	52.212-5(e) provides that notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of 52.212-5, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addendum to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components - (1) 52.222-26, Equal Opportunity (E.O. 11246); (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212); (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and (4) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
52.214-26	Audit and Records - Sealed Bidding	OCT 1997	All subcontracts expected to exceed the \$500,000 threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data.
52.214-28	Subcontractor Cost or Pricing Data - Modifications - Sealed Bidding	OCT 1997	Each subcontract that, when entered into, exceeds the \$500,000 threshold for submission of cost or pricing data in FAR 15.403-4(a)(1).
52.215-2	Audit and Records - Negotiation	JUN 1999	All subcontracts that exceed the simplified acquisition threshold (i.e., \$100,000 or \$200,000 for all contracts awarded outside the U.S. in support of contingency operations (as defined in 10 U.S.C. 101(a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)) and are cost-reimbursement incentive, time and material, labor hour or price redeterminable type, or any combination of these; for which cost or pricing data are required; or that require subcontractor to furnish reports as discussed in paragraph (e) of the clause.

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52.215-12	Subcontractor Cost or Pricing Data	OCT 1997	All subcontracts that exceed the \$500,000 threshold for submission of cost or pricing data at FAR. 15.403-4, shall contain either the substance of this clause if subcontractor shall be required to submit cost or pricing data; and if not than insert the substance of the clause at FAR 52.215-13.
52.215-13	Subcontractor Cost or Pricing Data - Modifications	OCT 1997	The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the \$500,000 threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.
52.215-14	Integrity of Unit Prices	OCT 1997	The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2 (i.e., \$100,000 or \$200,000 for all contracts awarded outside the US in support of contingency operations as defined in 10 U.S.C. 101(a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d); construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.
52.215-15	Pension Adjustments and Asset Reversions	DEC 1998	The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	OCT 1997	The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).
52.215-19	Notification of Ownership Changes.	OCT 1997	The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).
52.216-5	Price Redetermination - Prospective	OCT 1997	No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage- of-cost basis.
52.216-6	Price Redetermination - Retroactive	OCT 1997	No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage- of-cost basis.

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52.216-16	Incentive Price Revision - Firm Target	OCT 1997	No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.
52.216-17	Incentive Price Revision - Successive Targets	OCT 1997	No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.
52.219-8	Utilization of Small Business Concerns	OCT 2000	When FAR clause 52.219-9 is in the prime contract include this clause in all subcontracts that offer further subcontracting opportunities.
52.219-9	Small Business Subcontracting Plan	OCT 2000	The contractor will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	SEPT 2000	The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.
52.222-11	Subcontracts (Labor Standards)	FEB 1988	The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination - Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts.
52.222-21	Prohibition of Segregated Facilities	FEB 1999	The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

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52.222-22	Previous Contracts and Compliance Reports	FEB 1999	Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
52.222-26	Equal Opportunity	FEB 1999	The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
52.222-27	Affirmative Action Compliance Requirements for Construction	FEB 1999	If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	DEC 2001	The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.
52.222-36	Affirmative Action for Workers with Disabilities.	JUN 1998	The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$ 10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.
52.222-37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era	DEC 2001	The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.
52.222-41	Service Contract Act of 1965, as Amended	MAY 1989	The Contractor agrees to insert this clause in all subcontracts subject to the Act.
52.223-2	Clean Air and Water	APR 1984	Insert the substance of this clause into any nonexempt subcontract, (i.e., valued at \$100,000 or less, see FAR 23.104), including this subparagraph (b)(4).

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52.223-7	Notice of Radioactive Materials	JAN 1997	This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause. Paragraph (a) requires notice whenever any servicing is required by the contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries.
52.223-14	Toxic Chemical Release Reporting	OCT 1996	Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall - 1. For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and 2. Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).
52.225-10	Duty-Free Entry	APR 1984	The Contractor agrees to insert the substance of this clause in any subcontract under which - (1) There will be imported into the customs territory of the United States supplies identified in the Schedule as supplies to be accorded duty-free entry; or (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.
52.225-11	Buy American Act- Balance of Payments Program- Construction Materials under Trade Agreements	DEC 2001	The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

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52.227-1	Authorization and Consent	JUL 1995	The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (i.e., \$100,000 or \$200,000 for all contracts awarded outside the U.S. in support of contingency operations (as defined in 10 U.S.C. 101(a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d).); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold (i.e., \$100,000 or \$200,000 for all contracts awarded outside the U.S. in support of contingency operations (as defined in 10 U.S.C. 101(a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), does not affect this authorization and consent.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	AUG 1996	The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101 (i.e., \$100,000 or \$200,000 for all contracts awarded outside the U.S. in support of contingency operations (as defined in 10 U.S.C. 10 (a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d).
52.227-9	Refund of Royalties	APR 1984	The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.
52.227-10	Filing of Patent Applications- Classified Subject Matter	OCT 1984	The Contractor agrees to include, and require the inclusion of this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

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52.227-11	Patent Rights- Retention by the Contractor (Short Form)	JAN 1997	<p>The Contractor will: (1) include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization (The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions); (2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3; and (3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; <i>provided, however,</i> that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.</p>
52.227-12	Patent Rights- Retention by the Contractor (Long Form)	JAN 1997	<p>The Contractor shall: (1) include the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization (The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions); (2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work; and (3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.</p>

<p>PROPRIETARY: Use or disclosure is subject to the restrictions shown on sheet 1.</p>	CAGE CODE	DOCUMENT NUMBER: SOP-PUR-1105	
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52.227-13	Patent Rights- Acquisition by the Government	JAN 1997	<p>The Contractor shall (1) Include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work (The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions); (2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor-</p> <p>(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and</p> <p>(i) Shall not proceed with such subcontract without the written authorization of the Contracting Officer; (3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause; and (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.</p>
52.228-5	Insurance-Work on a Government Installation	JAN 1997	<p>The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.</p>

<p>PROPRIETARY: Use or disclosure is subject to the restrictions shown on sheet 1.</p>	CAGE CODE	DOCUMENT NUMBER: SOP-PUR-1105
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52.229-10	State of New Mexico Gross Receipts and Compensating Tax	OCT 1988	The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.
52.230-2	Cost Accounting Standards	APR 1998	The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date (as per paragraph (d)) or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit, which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.
52.230-3	Disclosure and Consistency of Cost Accounting Practices	APR 1998	The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that - (1) If the subcontract is awarded to a business unit, which pursuant to 48 CFR 9903.201- 2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. (2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000. (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

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52.230-5	Cost Accounting Standards-Educational Institution	APR 1998	<p>The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that— (1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted; (2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000; and (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.</p>
52.230-6	Administration of Cost Accounting Standards	NOV 1999	<p>For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5: (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); (2) Include the substance of this clause in all negotiated subcontracts; and (3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:</p> <ul style="list-style-type: none"> i. Subcontractor's name and subcontract number. ii. Dollar amount and date of award. iii. Name of Contractor making the award.
52.232-27	Prompt Payment for Construction Contracts	FEB 2002	<p>The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:</p> <p>(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.</p> <p>(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the</p>

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		<p>subcontractor an interest penalty for each payment not made in accordance with the payment clause -</p> <ul style="list-style-type: none"> i. For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and ii. Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty. <p>(3) Subcontractor clause flow down. A clause requiring each subcontractor to:</p> <ul style="list-style-type: none"> i. Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and ii. Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier. <p>(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—</p> <ul style="list-style-type: none"> (1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond; (2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and (3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if - <ul style="list-style-type: none"> (i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and (ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.
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52.234-1	Industrial Resources Developed Under Defense Production Act Title III	DEC 1994	The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.
52.236-13	Accident Prevention	NOV 1991	The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.
52.237-7	Indemnification and Medical Liability Insurance	JAN 1997	The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.
52.244-6	Subcontracts for Commercial Items and Commercial Components	DEC 2001	The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.
52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)	JAN 1986	The Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.
52.245-8	Liability for the Facilities	JAN 1997	The Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the facilities while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

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52.245-17	Special Tooling	DEC 1989	The Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontract appropriate provisions to obtain Government rights and data comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree in writing that such rights are not of interest to the Government).
52.245-18	Special Test Equipment	FEB 1993	The Contractor shall, in any subcontract that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Contractor shall furnish the names of such subcontractors to the Contracting Officer.
52.247-63	Preference for U.S.- Flag Air Carriers	JAN 1997	The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.
52.247-64	Preference for Privately Owned U.S.- Flag Commercial Vessels	JUN 1997	Except for contracts at or below the simplified acquisition threshold (i.e., \$100,000 or \$200,000 for all contracts awarded outside the US in support of contingency operations (as defined in 10 U.S.C. 101(a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
52.248-1	Value Engineering	NOV 1999	The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value.
52.248-3	Value Engineering - Construction	MAR 1989	The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value.

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DoD FAR SUPPLEMENT MANDATED FLOWDOWN CLAUSES AS OF DECEMBER 6, 2001

<u>Clause</u>	<u>Clause Title</u>	<u>Date</u>	<u>Application</u>
252.203-7001	Prohibition on persons convicted of fraud or other defense-contract- related felonies	MAR 1999	The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation (\$100,000 or \$200,000 for all contracts awarded outside the US in support of contingency operations (as defined in 10 U.S.C. 101(a)(13) or for peacekeeping operations as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), except those for commercial items or components.
252.204-7000	Disclosure of Information	DEC 1991	The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material	DEC 1991	Insert this clause, including paragraph (d) flowdown, in solicitations for subcontracts and purchase orders issued in performance of this contract, unless the Contractor knows that the item being purchased contains no precious metals.
252.209-7000	Acquisition from subcontractors subject to on-site inspection under the Intermediate- Range Nuclear Forces (INF) Treaty	NOV 1995	All solicitations and contracts exceeding the simplified acquisition threshold in Part 13 of FAR (\$100,000 or \$200,000 for all contracts awarded outside the US in support of contingency operations (as defined in 10 USC 101(a)(13) or for peacekeeping operations as defined in 10 USC 2302(7) and 41 USC 259(d)), except those for commercial items.
252.211-7000	Acquisition Streamlining	DEC 1991	Insert this clause, including paragraph (d) in all subcontracts over \$ 1 million.
252.212-7001	Contract Terms and Conditions Required to Implement Statutes or Executive Orders- Commercial Items	NOV 2001	In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract: 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (MAR 1998) (10 U.S.C. 2241 note). 252.247-7023 Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631). 252.247-7024 Notification of Transportation of Supplies by Sea

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(MAR 2000) (10 U.S.C. 2631).

252.217-7012	Liability and Insurance	Mar 2000	The Contractor shall ensure that subcontractors maintain insurance required by paragraph (d)(1).
252.222-7000	Restrictions on Employment of Personnel	DEC 1991	The Contractor shall insert the substance of this clause, including this paragraph (b), in each subcontract awarded under this contract.
252.223-7002	Safety Precautions for Ammunition and Explosives	MAY 1994	Subcontractors. (l) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives, (i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.
252.223-7007	Safeguarding sensitive conventional arms, ammunition, and explosives	SEP 1999	The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier - (1) For the development, production, manufacture, or purchase of AA&E; or (2) When AA&E will be provided to the subcontractor as Government-furnished property.
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials	NOV 1995	Alt I- All subcontracts, which require, may require, or permit a subcontractor to treat or dispose of non-DoD owned toxic or hazardous materials as defined in this clause.
252.225-7009	Duty-Free Entry- Qualifying country end products and supplies	MAR 1998	The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts.
252.225-7010	Duty-Free Entry-Additional Provisions	AUG 2000	The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i)(1), (2), and (3) of this clause will be included in applicable subcontracts.

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252.225-7014	Preference for Domestic Specialty Metals	MAR 1998	Alt I - The Contractor agrees to include the terms of this clause, including this paragraph (d), in every subcontract or purchase order awarded under this contract unless the item being purchased contains no specialty metals.
252.225-7016	Restriction on acquisition of ball and roller bearings	DEC 2000	The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are - (1) Commercial items other than ball or roller bearings; or (2) Items that do not contain ball or roller bearings.
252.225-7019	Restriction on Acquisition of Foreign Anchor and Mooring Chain	DEC 1991	All subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.
252.225-7025	Restriction on Acquisition of Forgings	JUN 1997	All subcontracts and purchase orders issued in performance of the contract, when products purchased contain restricted forging items.
252.225-7026	Reporting of Contract Performance Outside the United States	JUN 2000	Flowdown requirements. (1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding \$500,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence. (2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.
252.225-7032	Waiver of United Kingdom Levies	OCT 1992	The Contractor agrees to insert the substance of this clause, including this paragraph (e), in any subcontract for supplies where a lower tier subcontract over \$1 million with a U.K. firm is anticipated.
252.225-7037	Duty-Free Entry NAFTA Country End Products and Supplies	AUG 2000	The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed - (1) Directly with a foreign concern as a prime contract; or (2) As a subcontract or purchase order under a contract with a domestic concern.
252.225-7043	Antiterrorism/Force Protection for Defense Contractors Outside the United States	JUN 1998	The requirements of this clause apply to all subcontractors other than - A foreign government; A representative of a foreign government; or A foreign corporation wholly owned by a foreign government.
252.226-7001	Utilization of Indian Organizations and Indian-Owned Economic Enterprises - DoD Contracts	SEP 2001	The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts that - Are for other than commercial items; and Are expected to exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

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252.227-7013	Rights in Technical Data - Noncommercial Items	NOV 1995	Insert this clause, without alteration, in all subcontracts whenever any technical data for noncommercial items is to be obtained from a subcontractor.
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation	JUN 1995	Insert this clause, without alteration, in all subcontracts, whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor.
252.227-7016	Rights in Bid or Proposal Information	JUN 1995	Insert this clause, without alteration, except to identify the parties, in all subcontracts or similar contractual instruments, except to identify the parties.
252.227-7018	Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program	JUN 1995	Insert this clause, without alteration, whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government.
252.227-7019	Validation of Asserted Restrictions - Computer Software	JUN 1995	Insert this clause, without alteration, except to identify the parties, in all contracts, purchase orders, and other similar instruments, which will be furnishing computer software to the Government.
252.227-7033	Rights in Shop Drawings	APR 1966	All subcontracts at any tier.
252.227-7034	Patents - Subcontracts	APR 1984	Requires flowdown of FAR clause 52.227-12 (Long form Patent Rights Retention Clause) in all contracts for experimental, developmental, or research work to be performed by other than a small business or non-profit organization.
252.227-7037	Validation of Restrictive Markings on Technical Data	SEP 1999	The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data, except contractual instruments for commercial items or commercial components.
252.228-7001	Ground and Flight Risk	SEP 1996	Subcontract shall contain provisions requiring return of the aircraft in as good condition as when received.
252.228-7005	Accident Reporting and Investigation involving; Aircraft, Missiles and Space Launch Vehicles	DEC 1991	The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.
252.229-7004	Status of Contractors as a direct contractor (Spain)	JUN 1997	All subcontracts.
252.234-7001	Earned Value Management System	MAR 1998	Subcontractors specified in the contract for applications of EVMS criteria shall be required to comply with requirements of clause.
252.235-7002	Animal Welfare	DEC 1991	All subcontracts involving research of live vertebrate animals.

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252.235-7003	Frequency Authorization	DEC 1991	All subcontracts requiring the development, production, construction, testing or operation of a device for which a radio frequency authorization is required.
252-239-7016	Telecommunications Security Equipment, Devices, Techniques and Services	DEC 1991	All subcontracts which require securing telecommunications.
252.242-7005	Cost/Schedule Status Report. As prescribed in 242.1107-70(a), use the following clause	MAR 1998	The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm-fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.
252.244-7000	Subcontracts for Commercial Items and Commercial components (DoD contracts)	MAR 2000	In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244- 6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract: 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note). 252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631). 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).
252.247-7023	Transportation of Supplies by Sea	MAR 2000	The Contractor shall include this clause, including this paragraph (h), in all subcontracts under this contract that - (1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and (2) Are for a type of supplies described in paragraph (b)(2) of this clause.
252.247-7024	Notification of Transportation of Supplies by Sea	MAR 2000	The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties - In all subcontracts under this contract, if this contract is a construction contract; or If this contract is not a construction contract, in all subcontracts under this contract that are for - Noncommercial items; or Commercial items that - The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment); Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

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Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

252.249-7002 Notification of Anticipated Contract Termination or Reductions DEC 1996 Impose similar notice and flowdown requirements in all subcontracts in excess of \$100,000.

**NASA FAR SUPPLEMENT MANDATED FLOWDOWN CLAUSES
AS OF JANUARY 2001**

<u>Clause</u>	<u>Clause Title</u>	<u>Date</u>	<u>Application</u>
1852.204-76	Security Requirements for Unclassified Information Technology Resources July, 2000	JULY 2000	The Contractor shall incorporate this clause in all subcontracts where the requirements identified in this clause are applicable to the performance of the subcontract.
1852.208-81	Restrictions on Printing and Duplicating	AUG 1993	The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).
1852.211-70	Packaging, handling, and transportation	JUN 2000	The Contractor must place the requirements of this clause in all subcontracts for items that will become components of deliverable Class I, II, or III items.
1852.219-74	Use of Rural Area Small Businesses	SEP 1990	The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.
1852.219-75	Small Business Subcontracting Reporting	MAY 1999	The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219-9.
1852.223-70	Safety and Health	NOV 2000	The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that - (1) Amount to \$ 1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required); (2) Require construction, repair, or alteration in excess of \$ 25,000; or (3) Regardless of dollar amount, involve the use of hazardous materials or operations.
1852.223-74	Drug- and alcohol-free workforce	MAR 1996	The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

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1852.227-70	New Technology	NOV 1998	<p>Subcontracts. (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall - (i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and (ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.</p> <p>(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor - (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and (ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.</p> <p>(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.</p> <p>(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.</p> <p>(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(l)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.</p>
1852.227-85	Invention reporting and rights - foreign	APR 1986	In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.
1852.227-87	Transfer of Technical Data Under Space Station International Agreements	APR 1989	The Contractor agrees to include this clause, including this paragraph 5, in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.
1852.228-70.	Aircraft Ground and Flight Risk	NOV 1995	No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from

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1852.228-76	Cross-Waiver of liability for space station activities	DEC 1994	liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government. Note that the clause itself need not be incorporated but that the guidance above be complied with in subcontracting. The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(l)(i) through (c)(l)(iii) of this clause.
1852.228-78	Cross-Waiver of liability for NASA expendable launch vehicle launches	SEP 1993	The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(l)(i) through (c)(l)(iii) of this clause.
1852.231-71	Preference for Determination of Compensation Reasonableness	MAR 1994	The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed- price type subcontracts having a total potential value in excess of \$500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.
1852.237-71	Pension Portability	JAN 1997	The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if: <input type="checkbox"/> (1) The prime contract requires pension portability; <input type="checkbox"/> (2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed \$ 2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and <input type="checkbox"/> (3) Either of the following conditions exists: <input type="checkbox"/> (i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or <input type="checkbox"/> (ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).
1852.242-75	Earned Value Management Systems	MAR 1999	The Contractor shall require the subcontractors specified in the prime contract to comply with the requirements of this clause.
1852.242-76	Modified Cost Performance Report	MAR 1998	The Contractor shall require a subcontractor to furnish M/CPR in each case where the subcontract is other than firm-fixed-price, time-and-materials, or labor-hour; is 12 months or more in duration; and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's M/CPR.

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1852.244-70	Geographic participation in the aerospace program	APR 1985	The Contractor agrees to insert this clause in all subcontracts of \$100,000 and over.
1852.246-73	Human Space Flight Item	MAR 1997	The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level: "FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY. IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER."
1852.247-71	Protection of the Florida Manatee	MAR 1989	The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

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Fact Sheet: Executive Order 13201 - Notice of Employee Rights Concerning Payment of Union Dues

Executive Order 13201 (E.O. 13201) requires certain Government contracts and subcontracts to include an employee notice clause requiring non-exempt Federal contractors and subcontractors to post notices (Notice of Employee Rights Concerning Payment of Union Dues poster) informing their employees that they have certain rights related to union membership and use of union dues and fees under Federal law.

What are these employee rights?

Under Federal law employees cannot be required to join a union or maintain membership in a union to retain their jobs. Employees who are subject to a union security clause and choose not to be union members may object to the use of their compulsory union dues and fees for union expenditures that are not related to representational activities such as collective bargaining, contract administration, and grievance adjustment. Employees who object to paying for non-representational activities may be entitled to a refund and appropriate reduction of future payments.

What is the definition of government contract under E.O. 13201 and the implementing regulations?

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term "personal property" includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "non-personal services" includes, but is not limited to, utilities, construction, transportation, research, insurance, and fund depository. The term "government contract" does not include (a) agreements in which the parties stand in the relationship of employer and employee and (b) Federally assisted contracts.

What is the definition of subcontract under E.O. 13201 and the implementing regulations?

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (a) for the purchase, sale, or use of personal property or non-personal services which, in whole or in part, is necessary to the performance of any one or more contracts; or (b) under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

Are there exceptions to the requirement?

Yes. The employee notice clause does not have to be included in government contracts for purchases below the Simplified Acquisition Threshold (currently \$100,000). The posting requirement does not apply to: contractors with fewer than 15 employees; contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees; contractor establishments where state law forbids enforcement of union-security clauses ("right-to-work" states); or work performed outside the United States that does not involve the recruitment or employment of workers within the United States.

Must a contractor post the notice at worksites where no work is performed under Government contracts?

Yes, unless the contractor makes a written request to the Office of Labor-Management Standards (OLMS) and is granted a waiver of the posting requirement for facilities that are in all respects separate and distinct from activities of the contractor related to the performance of a contract.

What contracts are covered by E.O. 13201?

E.O. 13201 covers Government contracts entered into on or after April 28, 2004, that resulted from solicitations issued on or after April 18, 2001.

How will employers be able to obtain copies of the Notice of Employee Rights Concerning Payment of Union Dues poster?

Posters can be downloaded from the OLMS Web site at www.olnas.dol.gov. are available at any

OLMS or Office of Federal Contract Compliance Programs (OFCCP) field office, by emailing OLMS-Public@dol.gov, or by calling 1-800-4-US-DOL.

Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster. The poster must be 11 by 17 inches or larger.

How will the Department determine whether a contractor is in compliance with E.O. 13201?

The Deputy Assistant Secretary for Federal Contract Compliance may conduct a compliance evaluation to determine whether a contractor holding a nonexempt contract is in compliance with the requirements of E.O. 13201 and the implementing regulations. Such an evaluation may be limited to compliance with E.O. 13201

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or may be included in a compliance evaluation conducted under other laws, executive orders, and/or regulations enforced by the Department of Labor.

What are the procedures for filing a complaint?

An employee of a covered contractor may file a complaint alleging that the contractor has failed to post the employee notice as required by E.O. 13201 and the implementing regulations; and/or has failed to include the employee notice clause in nonexempt subcontracts or purchase orders. Complaints may be filed with OLMS or

OFCCP at 200 Constitution Avenue, NW, Washington, DC 20210, or with any OLMS or OFCCP field office.

Is more information on E.O. 13201 available?

Information on E.O. 13201 has been posted on the OLMS website at www.oims.do1.gov including the Final Rule, FAQs, the Executive Order and Adobe® Reader® (.pdf) versions of the poster.

OLMS Field Offices

Staff is available to answer questions about the LMRDA at OLMS offices in the following cities.

Atlanta, GA	(404) 562-2083	Detroit, MI	(313) 226-6200	Miami, FL	(954) 356-6850	Pittsburgh, PA	(412)395-6925
Birmingham, AL	(205)731-0239	Grand Rapids, MI	(616)456-2335	Milwaukee, WI	(414)297-1501	St. Louis, MO	(314) 539-2667
Boston, MA	(617) 624-6690	Guaynabo, PR	(787) 277-1547	Minneapolis, MN	(612) 370-3111	San Francisco, CA	(415) 848-6567
Buffalo, NY	(716) 551-4976	Honolulu, HI	(808)541-2705	Nashville, TN	(615)736-5906	Seattle, WA	(206) 398-8099
Chicago, IL	(312) 596-7160	Houston, TX	(713)718-3755	New Haven, CT	(203) 773-2130	Tampa, FL	(813)288-1314
Cincinnati, OH	(513) 684-6840	Indianapolis, IN	(317)614-0013	New Orleans, LA	(504) 589-6174	Washington, DC	(202)513-7300
Cleveland, OH	(216) 357-5455	Kansas City, MO	(816) 502-0290	New York, NY	(646) 264-3190		
Dallas, TX	(972) 850-2500	Las Vegas, NV	(702)388-6126	Newark, NJ	(732) 750-5661		
Denver, CO	(720) 264-3231	Los Angeles, CA	(213) 534-6405	Philadelphia, PA	(215) 861-4818		

OFCCP District and Area Offices

Albuquerque, NM	(505)245-2108	Detroit, MI	(313)442-3360	Memphis, TN	(901)544-3458	Phoenix, AZ	(602) 640-2960
Atlanta, GA	(404) 893-4575	Grand Rapids, MI	(616)456-2144	Miami, FL	(305) 536-5670	Pittsburgh, PA	(412)395-6300
Baltimore, MD	(410) 962-3572	Hartford, CT	(860) 240-4277	Milwaukee, WI	(414)297-3821	Portland, OR	(503)326-4112
Birmingham, AL	(205) 731-0820	Honolulu, HI	(808)541-2933	Minneapolis, MN	(612)370-3177	Raleigh, NC	(919) 856-4058
Boston, MA	(617) 624-6780	Houston, TX	(713)718-3800	Mountainside, NJ	(908)317-6969	Richmond, VA	(804) 771-2136
Buffalo, NY	(716)551-5065	Indianapolis, IN	(317)226-5860	Nashville, TN	(615) 781-5395	Salt Lake City, UT	(801) 524-4470
Charlotte, NC	(704)344-6113	Jackson, MS	(601)965-4668	New Orleans, LA	(504) 589-6575	San Antonio, TX	(210)472-5835
Chicago, IL	(312) 596-7046	Jacksonville, FL	(904) 232-3073	New York, NY	(212) 264-7743	San Diego, CA	(619)557-6489
Cleveland, OH	(216) 522-7472	Kansas City, MO	(816) 502-0370	Oakland, CA	(510) 637-2938	San Jose, CA	(408) 291-7384
Columbia, SC	(803) 765-5244	Landover, MD	(301)429-2190	Omaha, NE	(402) 221-3381	San Juan, PR	(787)771-1461
Columbus, OH	(614)469-5831	Little Rock, AR	(501)324-5436	Orange, CA	(714) 621-1631	Seattle, WA	(206) 398-8005
Dallas, TX	(972) 850-2650	Los Angeles, CA	(310) 235-6800	Orlando, FL	(407) 648-6181	St. Louis, MO	(314) 539-6394
Denver, CO	(720) 264-3200	Louisville, KY	(502) 582-6275	Philadelphia, PA	(215) 861-5765	Tulsa, OK	(918) 496-6773

U.S. Department of Labor
 Employment Standards Administration
 Office of Labor-Management Standards
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