

PRINCETON UNIVERSITY  
Princeton, New Jersey

TERMS AND CONDITIONS WHICH ARE PART OF PURCHASE ORDERS ISSUED UNDER  
GOVERNMENT CONTRACTS AND GRANTS FOR A PRICE IN EXCESS OF \$100,000

1. **Clean Air and Water**

(Applicable only if the contract exceeds \$100,000, or the Buyer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. 1857c-8(c)(1)] or the Federal Water Pollution Control Act [33 U.S.C. 1319(c)] and is listed by EPA, or the contract is not otherwise exempt.)

a. The Seller agrees as follows:

- (1) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;
- (2) that no portion of the work required by this purchase order will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this purchase order was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;
- (3) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and
- (4) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (4).

b. The terms used in this clause have the following meanings.

- (1) The term "Air Act" means the Clean Air Act, amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604.)
- (2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act [42 U.S.C. 1857c-5(d)], and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act [42 U.S.C. 1857c-7(d)].
- (4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C.

1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

- (5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.
- (7) The term "nonexempt contract or subcontract" means a contract or subcontract of more than \$100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 (whichever is applicable) and the procedures of the Department awarding this contract.

2. **Price Reduction for Defective Cost or Pricing Data**

If any price, including profit or fee, negotiated in connection with this purchase order or any cost reimbursable under this purchase order was increased by any significant sums because:

- a. the Seller furnished cost or pricing data which was not complete, accurate and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data;
- b. a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
- c. a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Seller but which was not complete, accurate and current as of the date certified in the subcontractor's Certificate of Current Cost or Pricing Data; or
- d. the Seller or a subcontractor or prospective subcontractor furnished any data, not within a., b., or c. above, which was not accurate as submitted;

the price or cost shall be reduced accordingly and the purchase order shall be modified in writing as

may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Seller if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller, **provided** the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the purchase order is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the seller may wish to include a clause in each subcontract requiring the subcontractor to appropriately indemnify the seller. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the seller and the subcontractor, **provided** that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

3. **Subcontractor Cost or Pricing Data**

- a. The Seller shall submit and require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (1) prior to the award of any subcontract the amount of which is expected to exceed \$100,000 when entered into; (2) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- b. The Seller shall certify and require subcontractors hereunder to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under a. above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.
- c. The Seller shall insert the substance of this clause including this paragraph c. in each subcontract hereunder which exceeds \$100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of \$100,000, the Seller shall insert the substance of the following clause:

**Subcontractor Cost or Pricing Data - Price Adjustments**

- a. Paragraphs b. and c. of this clause shall become operative only with respect to any modification made pursuant to one or more

provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000. The requirements of this clause shall be limited to such contract modifications.

- b. The Seller shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (1) prior to award of any subcontract, the amount of which is expected to exceed \$100,000 when entered into; (2) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- c. The Seller shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under b. above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.
- d. The Seller shall insert the substance of this clause including this paragraph d. in each subcontract hereunder which exceeds \$100,000 when entered into.

4. **Geographic Distribution of Defense Subcontract Dollars** (Applies when purchase order is issued under a contract with DOD)

- a. For each subcontract or modification thereof exceeding \$10,000, the Seller agrees to prepare and submit the report on DOD subcontracts in accordance with DD Form 2139.
- b. Negative reports will be submitted annually to the addressee contained on the DD Form 2139, when applicable. Negative reports will be submitted not later than October 31 for the 12-month period ending September 30 of each year. Negative reporting will be continued until the purchase order or subcontract has been completed and the addressee contained in DD Form 2139 notified of its completion.
- c. The Seller further agrees to insert the provisions of paragraphs a. and b. above in each subcontract in excess of \$100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence.