

PPPL General Provisions For Non-Commercial Subcontracts
Reference List
Part B - Agreements in Excess of \$100,000

SUBCONTRACT NO. _____

The following clauses, the full texts of which are set forth below, are hereby incorporated in and made part of the above-cited subcontract.

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ADDITIONAL APPLICABLE CLAUSES

_____	_____	_____
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B1. RESTRICTIONS ON SUBCONTRACTOR SALES (SEP 2006)

(a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to Princeton or the Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this Subcontract or under any follow-on production subcontract.

(b) The prohibition in paragraph (a) above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier subcontracts under this subcontract that exceed \$100,000.

B2. INTEGRITY OF UNIT PRICES (OCT 1997)

(Does NOT apply to construction, A/E or utility services, petroleum products, or services where supplies are NOT required)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) **Reserved**

(c) 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; 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.

B3. TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) (This clause is applicable to subcontracts awarded as a result of competition)

(a) Unless otherwise exempt, the Subcontractor, as owner or operator of a facility used in the performance of this Subcontract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Subcontractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the Subcontract.

(b) A Contractor-owned or -operated facility used in the performance of this Subcontract is exempt from the requirement to file an annual Form R if --

- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;
- (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
- (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
- (4) The facility does not fall within Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:
 - (i) Major group code 10 (except 1011, 1081, and 1094).
 - (ii) Major group code 12 (except 1241).
 - (iii) Major group codes 20 through 39.
 - (iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).
- (v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), or 5169, 5171, 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Subcontractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the Subcontract circumstances change so that any of its owned or operated facilities used in the performance of this Subcontract is no longer exempt --

- (1) The Subcontractor shall notify Princeton; and

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- (2) The Subcontractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall --
- (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
 - (ii) Continue to file the annual Form R for the life of the Subcontract for such facility.

(d) Princeton may terminate this Subcontract or take other action as appropriate, if the Subcontractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

B4. ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

(This clause is applicable for subcontracts for advisory and assistance services.)

(a) Purpose. The purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its financial, contractual, organizational, or other interests that relate to the work under this subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Subcontractor's Work Product. (i) The Subcontractor shall be ineligible to participate in any capacity in Department of Energy (DOE) contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract for a period of five (5) years after the completion of this subcontract. Furthermore, unless so directed in writing by Princeton, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of its products or services or the products or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this Subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by Princeton, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to Princeton and the Government.

(2) Access to and use of information. (i) If the Subcontractor, in the performance of this Subcontract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department of Energy based on such information for a period of six (6) months after either the completion of this Subcontract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department of Energy.

(ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Subcontractor may use technical data it first produces under this Subcontract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this Subcontract.

(c) Disclosure after award. (1) The Subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this subcontract, occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to Princeton. Such disclosure may include a description of any action that the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department of Energy may, however, direct Princeton to terminate the subcontract for convenience if it deems such termination to be in the best interest of the Government.

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(2) In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may direct Princeton to terminate this subcontract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may direct Princeton to terminate the subcontract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

(f) Lower-Tier Subcontracts.

(1) The Subcontractor shall include a clause, substantially similar to this clause, including this paragraph (f), in lower-tier subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this Subcontract of any such lower-tier subcontracts for advisory and assistance services, the Subcontractor shall obtain from the proposed lower-tier subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Subcontractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Subcontractor. If the conflict cannot be avoided or neutralized, the Subcontractor must obtain the approval of the DOE contracting officer prior to entering into the lower-tier subcontract.

B5. CLAUSES, STATUTES OR EXECUTIVE ORDERS INCORPORATED BY REFERENCE: The Subcontractor agrees to comply with the following Federal Acquisition Regulation (FAR) clauses by reference, as they exist on the effective date of this contract, with the same force and effect as if they were in full text. For FAR provisions incorporated by reference, "Government" means "Princeton", Contracting Officer" means "Princeton Plasma Physics Laboratory's Procurement Division Buyer or Subcontract Administrator", except where statute or regulation vests authority exclusively in specific agencies or individuals, and "Contractor" means "Subcontractor". The FAR clauses are available through the General Services Administration (GSA) at <http://www.acqnet.gov/far/> or they may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. To the maximum extent practicable, the Subcontractor shall incorporate, and require its subcontractors, divisions, subsidiaries or affiliates at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under this Agreement. The Subcontractor is not required to include any FAR provisions or clauses other than those listed below to the extent that they are applicable and as may be required to establish the reasonableness of prices under FAR 15, in a subcontract at any tier for commercial items or components. The Subcontractor shall include the terms of this clause, including this statement, in lower-tier subcontracts awarded under this Agreement.

<u>Clause:</u>	<u>Title:</u>	<u>FAR Reference:</u>
B5-1	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	52.203-12
B5-2	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIET NAM ERA, AND OTHER ELIGIBLE VETERANS	52.222-35
B5-3	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIET NAM ERA, AND OTHER ELIGIBLE VETERANS	52.222-37
B5-4	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES	52.222-39

NOTHING FOLLOWS