

COMMERCIAL GENERAL PROVISIONS

This purchase order incorporates the following articles by reference, with the same force and effect as if they were printed in full text. The revision of each article will be the one in effect on the date of submission of your proposal. Titles of articles in this subcontract are for reference purposes only and carry no substantive weight. To purchase a copy of the Department of Energy Acquisition Regulations (DEAR-CFR Title 48, Chapter 9), contact the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

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

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

PART I. **GENERAL PROVISIONS APPLICABLE TO ALL TRANSACTIONS**

<u>ARTICLE</u>	<u>REFERENCE</u>
Affirmative Action For Handicapped Workers, if the purchase order exceeds \$15,000.	FAR 52.222-36
Anti-Kickback Procedures, if the purchase order exceeds \$150,000	FAR 52.203-7
Buy American Act—Supplies	FAR 52.225-1
Combat Trafficking in Persons	FAR 52.222-50
Contract Terms and Conditions – Commercial Items modified as stated below: A.Paragraphs (d) and (s) are deleted in their entirety. B.Exclude reference to the Prompt Payment Act in paragraphs (g) and (i). C.Paragraph (o) is modified to include Supplier’s standard warranty period and non-conflicting warranty terms	FAR 52.212-4
Equal Opportunity	FAR 52.222-26
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, if the purchase order exceeds \$150,000.	FAR 52.222-35
Notice and Assistance Regarding Patent and Copyright Infringement, if the purchase order exceeds \$100,000 and is DOE funded.	DEAR 970-5227-5
Notification of Employee Rights under the National Labor Relations Act	FAR 52.222-40
Preference for Privately Owned U.S.-Flag Commercial Vessels	FAR 52.247-64
Privacy Act	FAR 52.224-2
Privacy Act Notification	FAR 52.224-1
Prohibition of Segregated Facilities	FAR 52.222-21

Commercial General Provisions

07/2011

ARTICLE

REFERENCE

Service Contract Act of 1965, As Amended

[FAR 52.222-41](#)

Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (>\$150K)

[FAR 52.222-43](#)

Fair Labor Standards Act and Service - Contract Act - Price Adjustment (>\$150K)

[FAR 52.222-44](#)

Restriction on Acquisition of Certain Articles Containing Specialty Materials

[DFARS 252.225-7009](#)

Subcontracts for Commercial Items

[FAR 52.244-6](#)

Subcontracts for Commercial Items and Commercial Components (DOD), if the purchase order is Navy funded.

[DFARS 252.244-7000](#)

Utilization of Small Business Concerns, if the purchase order exceeds \$150,000. Supplier must include this clause in any of its lower tier subcontracts exceeding \$650,000.

[FAR 52.219-8](#)

Small Business Subcontracting Plan, if the purchase order exceeds \$650,000. Supplier must include this clause in any of its lower tier subcontracts exceeding \$650,000.

[FAR 52.219-9](#)

Contractor Code of Business Ethics and Conduct (only applies if > \$5,000,000)

[FAR 52.203-13](#)

ORDER OF PRECEDENCE

In the event of any inconsistencies from this purchase order, the following order of precedence shall apply:
(Note: if GSA applies to the order, only this article in the General Provisions applies)

1. Purchase Order/Subcontract
2. GSA Agreement (only if applicable)
3. General Provisions
4. Applicable Referenced Documents (including final proposal for Design Build)*
5. Detailed Specification / Workslope
6. Drawings

*all documents except the General Provisions, Specifications/Workslopes and Drawings

Any inconsistencies whatsoever shall be brought to the attention of the Contract Administrator prior to any action related hereto by the Supplier.

LIABILITY FOR UNCOMPLETED OR ERRONEOUS TRANSFERS

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

- Making a correct payment;
- Recovering any erroneously directed funds.

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

System, and-

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

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

FAR 52.245-1 GOVERNMENT PROPERTY

Note: The preamble on page 1 of these General Provisions does not apply to this article. It is to be read literally as it is shown below:

As prescribed in 45.107(a), insert the following clause:

GOVERNMENT PROPERTY (Aug 2010)

(a) Definitions. As used in this clause—

“Acquisition cost” means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use. “Cannibalize” means to remove parts from Government property for use or for installation on other Government property.

“Supplier-acquired property” means property acquired, fabricated, or otherwise provided by the Supplier for performing a purchase order, and to which the Government has title.

“Supplier inventory” means—

(1) Any property acquired by and in the possession of a Supplier or sub-tier supplier under a purchase order for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire purchase order;

(2) Any property that the Government is obligated or has the option to take over under any type of purchase order, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the purchase order (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire purchase order.

“Supplier’s managerial personnel” means the Supplier’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Supplier’s business;

(2) All or substantially all of the Supplier’s operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

“Discrepancies incident to shipment” means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a purchase order. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Supplier for performance of a purchase order. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes Supplier-acquired property if the Supplier-acquired property is a deliverable under a cost purchase order when accepted by the Government for continued use under the purchase order.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Supplier-acquired property.

Government property includes material, equipment, special tooling, special test equipment, and real property.

Government property does not include intellectual property and software.

“Material” means property that may be consumed or expended during the performance of a purchase order, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

“Non-severable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Contract Administrator appointed in accordance with agency procedures, responsible for administering the purchase order requirements and obligations relating to Government property in the possession of a Supplier.

“Property records” means the records created and maintained by the Supplier in support of its stewardship responsibilities for the management of Government property.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in Supplier-acquired property.

“Real property”-- See Federal Management Regulation 102- 71.20 (41 CFR 102-71.20).

“Sensitive property” means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA).

(b) Property management. (1) The Supplier shall have a system to manage (control, use, preserve, protect, repair and 52.2-268 maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Supplier shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of Government property, consistent with voluntary consensus standards and/or industry- leading practices and standards for Government property management except where inconsistent with law or regulation. During the period of performance, the Supplier shall disclose any significant changes to their property management system to the Property Administrator prior to implementation.

(2) The Supplier’s responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property. This requirement applies to all Government property under the Supplier’s accountability, stewardship, possession or control, including its vendors or sub-tier suppliers (see paragraph

(f)(1)(v) of this clause).

(3) The Supplier shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(c) Use of Government property. (1) The Supplier shall use Government property, either furnished or acquired under this purchase order, only for performing this purchase order, unless otherwise provided for in this purchase order or approved by the Contract Administrator.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this purchase order or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contract Administrator.

(3) The Supplier shall not cannibalize Government property unless otherwise provided for in this purchase order or approved by the Contract Administrator.

(d) Government-furnished property. (1) The Government shall deliver to the Supplier the Government-furnished property described in this purchase order. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Supplier as Supplier- acquired property and subsequently transferred to another purchase order with this Supplier.

(2) The delivery and/or performance dates specified in this purchase order are based upon the expectation that the Government- furnished property will be suitable for purchase order performance and will be delivered to the Supplier by the dates stated in the purchase order.

(i) If the property is not delivered to the Supplier by the dates stated in the purchase order, the Contract Administrator shall, upon the Supplier’s timely written request, consider an equitable adjustment to the purchase order.

(ii) In the event property is received by the Supplier, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contract Administrator shall, upon the Supplier’s timely written request, advise the Supplier on a course of action

to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government’s expense. Upon completion of the required action(s), the Contract Administrator shall consider an equitable adjustment to the purchase order (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an “as-is” condition. The Supplier will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for purchase order performance. Any repairs, replacement, and/or refurbishment shall be at the Supplier’s expense.

(3) (i) The Contract Administrator may by written notice, at any time—

- (A) Increase or decrease the amount of Government- furnished property under this purchase order;
- (B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Supplier for the Government under this purchase order; or
- (C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Supplier’s timely written request, the Contract Administrator shall consider an equitable adjustment to the purchase order.

(e) Title to Government property.(1) The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Fixed-price purchase orders.(i) All Government-furnished property and all property acquired by the Supplier, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), are subject to the provisions of this clause.

(ii) Title vests in the Government for all property acquired or fabricated by the Supplier in accordance with the financing provisions or other specific requirements for passage of title in the purchase order. Under fixed price type purchase orders, in the absence of financing provisions or other specific requirements for passage of title in the purchase order, the Supplier retains title to all property acquired by the Supplier for use on the purchase order, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Supplier for use after inspection and acceptance by the Government, it shall be made accountable to the purchase order through a purchase order modification listing the item as Government-furnished property.

(iii) If this purchase order contains a provision directing the Supplier to purchase property for which the Government will reimburse the Supplier as a direct item of cost under this purchase order—

- (A) Title to property purchased from a vendor shall pass to and vest in the Government upon the vendor’s delivery of such property; and
- (B) Title to all other property shall pass to and vest in the Government upon—
 - (1) Issuance of the property for use in purchase order performance;
 - (2) Commencement of processing of the property or its use in purchase order performance; or
 - (3) Reimbursement of the cost of the property by the Government, whichever occurs first.

(3) Title under Cost-Reimbursement or Time-and-Material Purchase orders or Cost-Reimbursable purchase order line items under Fixed-Price purchase orders. (i) Title to all property purchased by the Supplier for which the Supplier is entitled to be reimbursed as a direct item of cost under this purchase order shall pass to and vest in the Government upon the vendor’s delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Supplier, shall pass to and vest in the Government upon—

- (A) Issuance of the property for use in purchase order performance;
- (B) Commencement of processing of the property for use in purchase order performance; or
- (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Supplier, title to which vests in the Government under this paragraph (e)(3)(iii) (collectively referred to as “Government property”), are subject to the provisions of this clause.

(f) Supplier plans and systems. (1) Suppliers shall establish and implement property management plans, systems, and procedures at the purchase order, program, site or entity level to enable the following outcomes:

- (i) Acquisition of Property. The Supplier shall document that all property was acquired consistent with its engineering, production planning, and property control operations.
- (ii) Receipt of Government Property. The Supplier shall receive Government property (document the receipt), record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment. (A) Government-furnished property. The Supplier shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.
- (B) Supplier-acquired property. The Supplier shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Supplier-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

- (iii) Records of Government property. The Supplier shall create and maintain records of all Government property accountable to the purchase order, including Government furnished and Supplier-acquired property.
- (A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:
- (1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition).
 - (2) Quantity received (or fabricated), issued, and balance-on-hand.
 - (3) Unit acquisition cost.
 - (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
 - (5) Unit of measure.
 - (6) Accountable purchase order number or equivalent code designation.
 - (7) Location.
 - (8) Disposition.
 - (9) Posting reference and date of transaction.
 - (10) Date placed in service.
- (B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Supplier may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.
- (iv) Physical inventory. The Supplier shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon purchase order completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Supplier's system or the property is to be transferred to a follow-on purchase order).
- (v) Sub-tier supplier control. (A) The Supplier shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of purchase order terms and conditions (e.g., extent of liability for loss, theft, damage or destruction of Government property).
- (B) The Supplier shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the sub-tier supplier's property management system.
- (vi) Reports. The Supplier shall have a process to create and provide reports of discrepancies; loss, theft, damage or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contract Administrator.
- (A) Loss, theft, damage or destruction. Unless otherwise directed by the Property Administrator, the Supplier shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage or destruction to the property administrator as soon as the facts become known or when requested by the Government.
- (B) Such reports shall, at a minimum, contain the following information:
- (1) Date of incident (if known).
 - (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable).
 - (3) Quantity.
 - (4) Unique-item Identifier (if available).
 - (5) Accountable Purchase order number.
 - (6) A statement indicating current or future need.
 - (7) Acquisition cost, or if applicable, estimated scrap proceeds, estimated repair or replacement costs.
 - (8) All known interests in commingled property of which the Government property is a part.
 - (9) Cause and corrective action taken or to be taken to prevent recurrence.
 - (10) A statement that the Government will receive any reimbursement covering the loss, theft, damage or destruction in the event the Supplier was or will be reimbursed or compensated.
 - (11) Copies of all supporting documentation.
 - (12) Last known location.
 - (13) A statement that the property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified.
- (vii) Relief of stewardship responsibility. Unless the purchase order provides otherwise, the Supplier shall be relieved of stewardship responsibility for Government property when such property is—
- (A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the purchase order, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage or destruction of Government property;
- (B) Delivered or shipped from the Supplier's plant, under Government instructions, except when shipment is to a sub-tier supplier or other location of the Supplier; or
- (C) Disposed of in accordance with paragraphs (j) and (k) of this clause.
- (viii) Utilizing Government property. (A) The Supplier shall utilize, consume, move, and store Government

Property only as authorized under this purchase order. The Supplier shall promptly disclose and report Government property in its possession that is excess to purchase order performance.

(B) Unless otherwise authorized in this purchase order or by the Property Administrator the Supplier shall not commingle Government material with material not owned by the Government.

(ix) Maintenance. The Supplier shall properly maintain Government property. The Supplier's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Supplier shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Supplier shall promptly perform and report to the Property Administrator purchase order property closeout, to include reporting, investigating and securing closure of all loss, theft, damage or destruction cases; physically inventorying all property upon termination or completion of this purchase order; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Supplier shall establish and maintain Government accounting source data, as may be required by this purchase order, particularly in the areas of recognition of acquisitions and dispositions of material and equipment.

(3) The Supplier shall establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(g) Systems analysis. (1) The Government shall have access to the Supplier's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Supplier's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Supplier's consent, all sub-tier supplier premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Supplier's (or sub-tier supplier's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this purchase order, or present an undue risk to the Government, the Supplier shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(4) The Supplier shall ensure Government access to sub-tier supplier premises, and all Government property located at sub-tier supplier premises, for the purposes of reviewing, inspecting and evaluating the sub-tier supplier's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Supplier Liability for Government Property.

(1) Unless otherwise provided for in the purchase order, the Supplier shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this purchase order, except when any one of the following applies—

(i) The risk is covered by insurance or the Supplier is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) The loss, theft, damage or destruction is the result of willful misconduct or lack of good faith on the part of the Supplier's managerial personnel.

(iii) The Contract Administrator has, in writing, revoked the Government's assumption of risk for loss, theft, damage or destruction, due to a determination under paragraph (g) of this clause that the Supplier's property management practices are inadequate, and/or present an undue risk to the Government, and the Supplier failed to take timely corrective action. If the Supplier can establish by clear and convincing evidence that the loss, theft, damage or destruction of Government property occurred while the Supplier had adequate property management practices or the loss, theft, damage or destruction of Government property did not result from the Supplier's failure to maintain adequate property management practices, the Supplier shall not be held liable.

(2) The Supplier shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage or destruction. The Supplier shall separate the damaged and undamaged Government property, place all the affected Government property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Supplier shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage or destruction of Government property.

(4) Upon the request of the Contract Administrator, the Supplier shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of purchase order for

the following:

- (1) Any delay in delivery of Government-furnished property.
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
- (3) An increase, decrease, or substitution of Government-furnished property.
- (4) Failure to repair or replace Government property for which the Government is responsible.
- (j) Supplier inventory disposal. Except as otherwise provided for in this purchase order, the Supplier shall not dispose of Supplier inventory until authorized to do so by the Plant Clearance Officer.
 - (1) Scrap to which the Government has obtained title under paragraph (e) of this clause. (i) Supplier with an approved scrap procedure. (A) The Supplier may dispose of scrap resulting from production or testing under this purchase order without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Supplier shall submit the scrap on an inventory disposal schedule. (B) For scrap from other than production or testing the Supplier may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures). (C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—
 - (1) Requires demilitarization;
 - (2) Is a classified item;
 - (3) Is generated from classified items;
 - (4) Contains hazardous materials or hazardous wastes;
 - (5) Contains precious metals that are economically beneficial to recover; or
 - (6) Is dangerous to the public health, safety, or welfare.
 - (ii) Supplier without an approved scrap procedure. The Supplier shall submit an inventory disposal schedule for all scrap. The Supplier may not dispose of scrap resulting from production or testing under this purchase order without Government approval.
- (2) Predisposal requirements. (i) Once the Supplier determines that Supplier-acquired property is no longer needed for purchase order performance, the Supplier in the following order of priority—
 - (A) May contact the Contract Administrator if use of the property in the performance of other Government purchase orders is practical;
 - (B) May purchase the property at the acquisition cost; or
 - (C) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).
- (ii) The Supplier shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not used in the performance of other Government purchase orders under paragraph (j)(2)(i)(A) of this clause, property that was not purchased under paragraph (j)(2)(i)(B) of this clause, and property that could not be returned to a supplier under paragraph (j)(2)(i)(C) of this clause.
- (3) Inventory disposal schedules. (i) The Supplier shall use Standard Form 1428, Inventory Disposal Schedule, to identify—
 - (A) Government-furnished property that is no longer required for performance of this purchase order, provided the terms of another Government purchase order do not require the Government to furnish that property for performance of this purchase order;
 - (B) Supplier-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that purchase order; and
 - (C) Termination inventory.
- (ii) The Supplier may annotate inventory disposal schedules to identify property the Supplier wishes to purchase from the Government.
- (iii) Unless the Plant Clearance Officer has agreed otherwise, or the purchase order requires electronic submission of inventory disposal schedules, the Supplier shall prepare separate inventory disposal schedules for—
 - (A) Special test equipment with commercial components;
 - (B) Special test equipment without commercial components;
 - (C) Printing equipment;
 - (D) Information technology (e.g., computers, computer components, peripheral equipment, and related equipment);
 - (E) Precious metals in raw or bulk form;
 - (F) Nonnuclear hazardous materials or hazardous wastes; or
 - (G) Nuclear materials or nuclear wastes.
- (iv) The Supplier shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:
 - (A) Any additional information that may facilitate understanding of the property's intended use.

- (B) For work-in-progress, the estimated percentage of completion.
- (C) For precious metals, the type of metal and estimated weight.
- (D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.
- (E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).
- (v) Property with the same description, condition code, and reporting location may be grouped in a single line item.
- (vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.
- (4) Submission requirements. The Supplier shall submit inventory disposal schedules to the Plant Clearance Officer no later than—
- (i) 30-days following the Supplier's determination that a Government property item is no longer required for performance of this purchase order;
- (ii) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of purchase order deliveries or performance; or
- (iii) 120 days, or such longer period as may be approved by the Termination Contract Administrator following purchase order termination in whole or in part.
- (5) Corrections. The Plant Clearance Officer may—
- (i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and
- (ii) Require the Supplier to correct an inventory disposal schedule.
- (6) Post submission adjustments. The Supplier shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Supplier may make the necessary adjustments to the inventory schedule.
- (7) Storage. (i) The Supplier shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Supplier to an equitable adjustment for costs incurred to store such property on or after the 121st day.
- (ii) The Supplier shall obtain the Plant Clearance Officer's approval to remove Government property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Supplier to transport or store the property shall not increase the price or fee of any Government purchase order. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Supplier of any liability for such property under this purchase order.
- (8) Disposition instructions. (i) If the Government does not furnish disposition instructions to the Supplier within 45 days following acceptance of a scrap list, the Supplier may dispose of the listed scrap in accordance with the Supplier's approved scrap procedures.
- (ii) The Supplier shall prepare for shipment, deliver f.o.b. origin, or dispose of Supplier inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contract Administrator or by the Plant Clearance Officer, the Supplier shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.
- (iii) The Contract Administrator may require the Supplier to demilitarize the property prior to shipment or disposal. In such cases, the Supplier may be entitled to an equitable adjustment under paragraph (i) of this clause.
- (9) Disposal proceeds. As directed by the Contract Administrator, the Supplier shall credit the net proceeds from the disposal of Supplier inventory to the purchase order, or to the Treasury of the United States as miscellaneous receipts.
- (10) Sub-tier supplier inventory disposal schedules. The Supplier shall require its Sub-tier suppliers to submit inventory disposal schedules to the Supplier in accordance with the requirements of paragraph (j)(4) of this clause.
- (k) Abandonment of Government property. (1) The Government shall not abandon sensitive Government property or termination inventory without the Supplier's written consent.
- (2) The Government, upon notice to the Supplier, may abandon any non-sensitive Government property in place, at which time all obligations of the Government regarding such property shall cease.
- (3) The Government has no obligation to restore or rehabilitate the Supplier's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.
- (l) Communication. All communications under this clause shall be in writing.
- (m) Purchase orders outside the United States. If this purchase order is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this

clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

Alternate I (Aug 2010). As prescribed in 45.107(a)(2), substitute the following for paragraph (h)(1) of the basic clause:

(h)(1) The Supplier assumes the risk of, and shall be responsible for, any loss, theft, damage or destruction of Government property upon its delivery to the Supplier as Government- furnished property. However, the Supplier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this purchase order.

DISPUTES

Supplier shall not be entitled to claim and BMPC shall not be liable to Supplier or its Suppliers or Suppliers of any tier in tort (including negligence), or purchase order except as specifically provided in this purchase order.

Any claim arising out of or attributable to the interpretation or performance of this subcontract which cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause.

If for any reason Supplier and BMPC are unable to resolve a claim for an adjustment, Supplier or BMPC shall notify the other party in writing that a dispute exists and request or provide a final determination regarding the claim. Any such request by Supplier shall clearly reference this clause and shall summarize the facts in dispute and Supplier's proposed resolution of the dispute.

BMPC shall, within sixty (60) calendar days of any request by Supplier, provide a written final determination setting forth the contractual basis for its decision and defining what purchase order adjustments it considers equitable. Upon Supplier's written acceptance of BMPC's determination the purchase order will be modified and the determination implemented accordingly.

If BMPC's final determination is not accepted by Supplier, the matter shall, within thirty (30) calendar days, be referred to senior executives of the parties who shall have designated authority to settle the dispute. The parties shall promptly prepare and exchange memoranda stating the issues in dispute and their respective positions, summarizing the negotiations that have taken place and attaching relevant documents.

The senior executives will meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty (30) days of the commencement of such negotiations, the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (ADR) process which is mutually acceptable to the parties.

Should the parties agree to pursue an ADR process each party will be responsible for its own expenses incurred to resolve the dispute during the ADR process.

If the parties do not agree to an ADR process or are unable to resolve the dispute through ADR, either party shall then have the right to pursue any legal remedy consistent with other terms of the purchase order.

Pending final resolution of any performance issue, request for equitable adjustment, claim or dispute regarding this purchase order, the Supplier shall proceed diligently with the performance of this purchase order.

TITLE AND ADMINISTRATION

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

MEMORY BEARING COMPONENTS

A memory bearing component is computer memory that can retain the stored information even when not powered. Examples include, but are not limited to, read-only memory, flash memory, most types of magnetic

computer storage devices (e.g. hard disks, floppy disks, and magnetic tape), optical discs, and early computer storage methods such as paper tape and punched cards. Once a memory bearing component has been delivered, it will not be removed from the laboratory unless Buyer can conclude that the component is free from any classified or sensitive data and removal of the component is approved by the Buyer (in accordance with the DOE Order 471.205.1A). Magnetic media is subject to Buyer Security Regulations and will not be allowed to be removed from Buyer's sites. Memory bearing components retained by Buyer, in accordance with Buyer Security Requirements, shall be replaced at Supplier's cost. Seller shall invoice for reimbursement for each part replaced or repaired.

ANTI-VIRUS WARRANTY

Software and Hardware provided by the Supplier under this Purchase Order shall not contain computer viruses or other malicious software. In fulfilling the terms of this Purchase Order, the Supplier agrees to take precautions to avoid conveying computer viruses or other malicious software to the Buyer. Specifically, all computer files, disks, memories or other media provided by the Supplier to the Buyer (other than third party Supplier software in its original, unopened packaging materials) will be checked by the Supplier prior to delivery to the Buyer to detect and remove any computer virus or other malicious software. The virus check that is performed by the Supplier, will include checks with current, up-to-date anti-virus software and any virus problems that are found during the check (or later found by the Buyer) will be fixed by the Supplier.

WARRANT OF MANUFACTURER'S PRODUCT

The supplier shall source all products submitted in this offer as new products from the Manufacturer or through the Manufacturer's Authorized Channels only, in accordance with all applicable laws and policies at the time of purchase.

CHOICE OF LAW

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

PART II.
GENERAL PROVISIONS APPLICABLE ONLY TO ON-SITE EFFORT

The provisions contained in Part I of the Commercial General Provisions are applicable to this purchase order. The provisions contained in Part II of the Commercial General Provisions are only applicable to the Supplier if the purchase order requires Supplier to perform any work on the Buyer or Government premises.

<u>ARTICLE</u>	<u>REFERENCE</u>
Insurance - Work On A Government Installation	FAR 52.228-5
Permits and Responsibilities. This clause is applicable to all purchase orders with work performed on the Buyer or Government premises.	FAR 52.236-7
Privacy Act Notification, if the purchase order requires the design, development, or operation of a system of records on individuals to accomplish work effort.	FAR 52.224-1
Privacy Act, if the purchase order requires the design, development, or operation of a system of records on individuals to accomplish work effort	FAR 52.224-2
Security, if performance of the purchase order involves or is likely to involve access to classified information.	DEAR 952.204-2
Whistleblower Protection For Contract Employees	DEAR 952.203-70
Workplace Substance Abuse Programs At DOE Sites, if the purchase order is in excess of \$25,000 and requires Supplier to have access to, or handle, classified information or special nuclear materials or involves risk of danger to life, the environment, public safety or national security or requires transportation of hazardous materials to or from DOE sites.	DEAR 970.5223-4

INSURANCE

(Excluded items: materials, commercial products)

Unless otherwise specified in this Purchase Order, Supplier shall, at its sole expense, maintain in effect at all times during the performance of the work, insurance coverage, with limits not less than those set forth below with insurers rated by A.M. Best Company no less than A-VII or equivalent, and under forms of policies satisfactory to Buyer.

At all times during performance, the Supplier shall maintain a current Certificate of Insurance evidencing insurance coverage not less than required by this article and providing for thirty (30) days written notice to the Contract Administrator by the insurance company prior to cancellation or material change in policy coverage. The period of insurance coverage must coincide with the period of performance (term) of the Purchase Order, including the entire warranty period (whether on the original Certificate of Insurance or on subsequent such Certifications). Supplier Certificates of Insurance shall demonstrate Supplier's insurance policies contain the minimum coverage set forth in this clause. Thirty (30) calendar days advance written notice shall be given to Buyer prior to cancellation, termination or material alteration of said policies of insurance. Certificates shall identify on their face the Buyer name, and the applicable Purchase Order Number.

The Supplier shall also require all first-tier subcontractors who will perform work on Buyer or Government premises to procure and maintain the insurance specified below during the entire period of their performance, including warranty period, and to furnish proof at Buyer's request.

A. Required Coverage

1. **Worker' Compensation Insurance** as required by an applicable law or regulation, both State and/or Federal.

If there is an exposure of injury to Supplier's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

2. **Employer Liability Insurance** of not less than:

\$1,000,000 each accident for bodily injury by accident;
 \$1,000,000 each employee for bodily injury by disease; and
 \$1,000,000 bodily injury by disease policy limit.

The above policies shall include an Insurer's waiver of subrogation in favor of Buyer and the Government.

3. **Commercial General Liability Insurance**

Supplier shall maintain Commercial Liability Insurance covering all operations by or on behalf of the Supplier providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- Premises and Operations
- Independent contractors
- Products and Completed Operations;
- Contractual Liability insuring the indemnity agreement specified in this Purchase order
- Broad Form Property Damage (including Completed Operation);
- Personal Injury Liability

The Commercial General Liability insurance shall be written on an occurrence coverage basis, not claims-made. The policy of insurance which affords Commercial General Liability shall contain a provision or endorsement stating that:

1. Buyer and their subsidiaries and affiliates shall be named as Additional Insureds, including in any Excess or Umbrella Liability Insurance(s). and
2. Includes an insurer's waiver of subrogation in favor of each Additional Insured; and
3. Contains a cross liability and severability of interest clause and must be primary and non-contributory, with any similar insurance coverage (primary and excess) maintained by the Additional Insureds; and
4. *The following requirement applies only for Cases II and III below:* Does not contain any exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards;

Policy Limits

For Supplier's Commercial General Liability Insurance, the limits of liability for bodily injury, property damage and personal injury shall be not less than;

CASE I*

\$1,000,000 Combined single limit for Bodily Injury and Property Damage-each occurrence.
 \$1,000,000 Personal Injury Limit-each occurrence
 \$2,000,000 General Annual Aggregate Limit

CASE II*

\$2,000,000 Combined single limit for Bodily Injury and Property Damage-each occurrence.
 \$2,000,000 Personal Injury Limit-each occurrence
 \$4,000,000 General Annual Aggregate Limit

CASE III*

\$5,000,000 Combined single limit for Bodily Injury and Property Damage-each occurrence.

\$5,000,000 Personal Injury Limit-each occurrence

\$5,000,000 General Annual Aggregate Limit

The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

* NOTE: The purchase order document specifically will identify the applicable Case within the Insurance Requirements section.

4. **Automobile Liability Insurance**, including coverage for the operation of any vehicle to include, but not limited to, owned, hired and non-owned. The combined single limit for Bodily Injury and Property Damage Liability shall be no less than \$1,000,000 for any one accident or loss. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy. Supplier's Automobile Liability Insurance shall include coverage for Automobile Contractual Liability.
5. **Excess or Umbrella Insurance** with limits not less than \$5,000,000 per occurrence/aggregate, coverage shall be provided on a follow form basis, applying as excess over Employer's Liability, Commercial General Liability and Automobile Liability, as stated above. Such insurance shall include an Insurer's waiver of subrogation in favor of each Additional Insured, be primary and non-contributory with any similar insurance coverage maintained by the Additional Insureds.

B. Special Operations Insurance Coverage

The following types of insurance coverage are only required if specifically identified in the purchase order Insurance Requirements section. The requirements are as identified below.

1. Supplier shall provide or have provided coverage for liabilities arising out of marine operations, including contractual liability under its **Commercial General Liability Insurance or Marine Hull and Machinery Insurance and Protection and Indemnity Insurance**. In the event such marine operations involve any Supplier owned, hired, chartered or operated vessels, barges, tugs or other marine equipment, Supplier agrees to provide or have provided Marine Hull and Machinery Insurance and Protection and Indemnity Insurance and/or Charterer's Liability Insurance. The combined limit of the Protection and Indemnity Insurance and/or Charterer's Liability Insurance shall be at least \$5,000,000 per occurrence or the market value of the vessel, whichever is greater. The Protection and Indemnity and/or Charterer's liability and the Hull and Machinery coverages shall include coverage for contractual liability, wreck removal, sudden and accidental pollution, tower's liability if applicable, special operations and full collision coverage and shall be endorsed:
 - a. To provide full coverage to Buyer and the Government as Additional Insureds without limiting coverage to liability "as owner of the vessel" and to delete any "as owner" clause or other language that would limit coverage to liability of an insured "as owner of the vessel"; and
 - b. To waive any limitation provided by any applicable liability statute.

All marine insurances provided by the Supplier shall include an Insurer's waiver of subrogation in favor of the Additional Insureds.

2. Supplier shall provide **Stevedore's Legal Liability and/or Wharfingers Legal Liability Insurance** with limits not less than \$5,000,000 per occurrence. Such insurance shall name Buyer as an Additional Insured, include an Insurer's waiver of subrogation in favor of each Additional Insured, state that it is primary and non-contributory, and contain a cross liability or severability or interest clause.
3. Supplier shall also carry "**All Risk**" **Motor Truck Cargo Insurance**, or such similar form of insurance that will insure against physical loss or damage to the property being transported, moved, or handled by Supplier pursuant to the terms of this contract. Such insurance shall provide a limit of not less than the replacement cost of the highest value being moved, shall insure the interest of the Supplier, and the Buyer, as their respective interests may appear, and shall include an insurer's waiver of subrogation in favor of each such party.

4. Involve **Aircraft** (fixed wing or helicopter) owned, operated or chartered by the Supplier, liability arising out or such aircraft shall be insured for a combined single limit not less that \$10,000,000 each occurrence and such limit shall apply to Bodily Injury (including passengers) and Property Damage Liability. Such insurance shall name the Buyer as Additional Insureds, include an Insurer's waiver of subrogation in favor of each Additional Insured, state that it is primary and non-contributory, and contain a cross-liability or severability of interest clause. If the aircraft hull is insured, such insurance shall provide for an Insurer's waiver of subrogation rights in favor of the Buyer. In the event the Supplier charters aircraft, the foregoing insurance and evidence of insurance may be furnished by the owner of the chartered aircraft, provided the above requirements are met.
5. Supplier shall also carry **Pollution Liability Insurance** in an amount not less that \$5,000,000 per occurrence or claim/annual aggregate. Such insurance shall provide bodily injury and property damage and clean up costs coverage for both the sudden and gradual occurrences arising from the work. If Supplier activities involve professional services, coverage shall include pollution losses resulting from any deficient professional services. If Completed Operations is limited in the policy, such Completed Operations Coverage shall be for a period of not less than five (5) years. If such insurance is written on a claim-made form, such insurance shall include minimally a six (6) year extended discovery period and shall name the Buyer and the Government as Additional Insureds.
6. Supplier shall also carry **Asbestos Liability Insurance** in an amount not less than \$5,000,000 per occurrence/annual aggregate. The policy shall be written on an "occurrence basis" with no sunset clause. Such insurance shall name the Buyer and the Government as Additional Insureds.
7. Supplier shall also carry **Business Automobile Insurance** covering liability arising out of the transportation of hazardous materials in an amount not less than \$2,000,000 per occurrence. Such policy shall include Motor Carrier Endorsement MCS-90 or equivalent. NEITHER BUYER NOR THE GOVERNMENT SHALL BE NAMED AS AN ADDITIONAL INSURED FOR THIS POLICY.
8. Supplier shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current **Environmental Liability Insurance** in the amount of not less than \$5,000,000 per occurrence/annual aggregate. Supplier shall also carry Pollution Liability in an amount not less than \$5,000,000 per occurrence or claim/annual aggregate as required in sub-clause B.5 above. Coverage shall also include non-owned disposal site (NODS) coverage for losses at the jobsite.
9. **Contractor's Tools and Equipment Insurance** covering loss or damage to equipment, tools or any other property of Supplier. Such insurance shall include an Insurer's waiver of subrogation in favor of Buyer and the Government, and indemnifies Buyer and the Government from and against any liability arising out of or for any loss or damage to such equipment, tools, or property of Supplier and each of its lower tier suppliers.
10. **Builders Risk Insurance**, including Buyer and the Government as Additional Insureds and written on an "All Risk" basis with a limit equal to the total installed cost of the Supplier's work. "Total installed cost" shall include the value of material and equipment provided by Buyer and the Government while such property is in the care custody, and control of Supplier. This insurance will cover all material and equipment installed or to be installed in permanent buildings and facilities and will include coverage for material in transit and in offsite storage. In addition, Supplier's insurer shall waive its right of subrogation against Buyer and the Government. Should any loss or damage to the Work occur, deductibles under this policy shall be for Supplier's account.

C. Related Obligations

1. The requirements contained herein as to types and limits, as well as Buyer's approval of insurance coverage to be maintained by Supplier, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Supplier under this contract. The Supplier shall require each lower-tier supplier to comply with all insurance requirements appropriate for its scope of work, and any deficiency shall not relieve the Supplier of its responsibility herein. Upon written request, the Supplier shall provide the Buyer with complete, certified copies of all required insurance policies, and/or copies of lower-tier Supplier certificates of insurance.

2. Buyer shall have no duty to advise Supplier in the event Supplier' insurance does not comply with the requirements of this purchase order. If Supplier fails to procure and maintain all the insurance coverage required by this clause, Supplier shall indemnify and hold harmless Buyer, Government, each of their parents, subsidiaries and affiliate, and the officers, directors and employees of each from and against all claims, demands, costs, charges, and expenses that would have been covered by such insurance had Supplier complied with its obligations herein.

D. Buyer or Government Furnished Insurance

Neither the Buyer nor the Government is maintain any insurance on behalf of the Supplier covering against loss or damage to the work or to any other property of the Supplier unless otherwise specifically stated herein and as may be described by an appendix hereto. Any insurance maintained by the Buyer is excess of and shall not in any manner contribute to any loss covered by the Supplier's primary insurance or with any other insurance available to the Supplier in excess of such primary insurance and applicable to such loss.

E. Non-Waiver

Buyer's acceptance of any evidence of insurance, including any certificate of insurance, shall not: (i) constitute acceptance of the adequacy of Supplier's insurance coverage, (ii) imply that any insurance coverage provided by Supplier complies with the requirements of this subcontract, or (iii) waive Buyer's or Government's rights to enforce any of Supplier's requirements in this subcontract, including the requirements concerning insurance coverage amounts, insurance terms and conditions and qualifications of insurance companies.