

## Attachment II

### **“FLOW-DOWN” CLAUSES APPLICABLE TO PURCHASE ORDERS INVOLVING FUNDS FROM A FEDERAL GOVERNMENT CONTRACT OR GRANT**

If the Order involves funds from a Federal government contract—or funds from a subcontract at any tier relating to a Federal government contract—the following clauses from the Federal Acquisition Regulation (“FAR”) and the Defense Federal Acquisition Regulation Supplement (“DFARS”) are incorporated into the Order by reference where applicable and form a part of the terms and conditions of the Order. The full text of the FAR clauses may be found at <http://www.arnet.gov/far/>. The full text of the DFARS clauses may be found at <http://farsite.hill.af.mil/VFDFARa.htm>. Seller agrees to flow down all applicable FAR and DFARS clauses to lower-tier subcontractors.

Where necessary to make the language of the FAR and DFARS clauses applicable to the Order, the term “contractor” shall mean “Seller,” the term “contract” shall mean “the Order,” and the terms “government,” “contracting officer,” and equivalent terms and phrases shall mean “Yale University.”

### **CLAUSES APPLICABLE TO PURCHASES OF “COMMERCIAL ITEMS”**

The following clauses apply to Orders involving “commercial items,” a term defined at FAR 52.202-1. In general, a “commercial item” is a product or service that is available to the general public in the commercial marketplace. Only the following clauses are required for purchases of “commercial items.”

FAR 52.202-1 Definitions (Dec. 2001)

FAR 52.219-8 Utilization of Small Business Concerns (Oct. 2000)

FAR 52.222-26 Equal Opportunity (Apr. 2002) (subparagraphs (b)(1)-(b)(11) only)

FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec. 2001)

FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)

FAR 52.244-6 Subcontracts for Commercial Items (Apr. 2003)

FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr. 2003)

DFARS 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (Apr. 2003)

DFARS 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (March 2000)

DFARS 252.247-7023 Transportation of Supplies by Sea (May 2002)

DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS  
REGARDLESS OF DOLLAR VALUE**

FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Apr. 1991)

FAR 52.204-2 Security Requirements (Aug. 1996) (applies when the subcontract or Order involves access to information classified “Confidential,” “Secret,” or “Top Secret”)

FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr. 2002)

FAR 52.215-15 Pension Adjustments and Asset Reversions (Dec. 1998) (applies when it is anticipated that the subcontract or Order will require either the submission of cost or pricing data OR preaward or postaward cost determinations subject to FAR Part 31)

FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Oct. 1997) (applies when it is anticipated that the subcontract or Order will require either the submission of cost or pricing data OR preaward or postaward cost determinations subject to FAR Part 31)

FAR 52.215-19 Notification of Ownership Changes (Oct. 1997) (applies when it is anticipated that the subcontract or Order will require either the submission of cost or pricing data OR preaward or postaward cost determinations subject to FAR subpart 31.2)

FAR 52.222-21 Prohibition of Segregated Facilities (Feb. 1999)

FAR 52.222-26 Equal Opportunity (Apr. 2002) (subparagraphs (b)(1) through (b)(11) only)

FAR 52.222-41 Service Contract Act of 1965, As Amended (May 1989)

FAR 52.223-7 Notice of Radioactive Materials (Jan. 1997) (applies when radioactive material is involved)

FAR 52.224-2 Privacy Act (Apr. 1984) (applies when the design, development, or operation of any system of records on individuals is required to accomplish an agency function)

FAR 52.225-8 Duty-Free Entry (Feb. 2000) (applies when supplies entitled to duty-free entry will be imported into the customs territory of the United States OR when other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States)

FAR 52.225-13 Restrictions on Certain Foreign Purchases (June 2003)

FAR 52.227-9 Refund of Royalties (Apr. 1984) (applies when the amount of royalties reported during the negotiation of the subcontract or Order exceeds \$250)

FAR 52.227-10 Filing of Patent Applications—Classified Subject Matter (Apr. 1984) (applies when the subcontract or Order is likely to involve classified subject matter)

FAR 52.227-11 Patent Rights—Retention by the Contractor (Short Form) (June 1997) (applies when the subcontract or Order involves experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization)

FAR 52.227-12 Patent Rights—Retention by the Contractor (Long Form) (Jan. 1997) (applies when the subcontract or Order involves experimental, development, or research work NOT to be performed by a small business firm or domestic nonprofit organization)

FAR 52.227-13 Patent Rights—Acquisition by the Government (Jan. 1997) (applies when the subcontract or Order involves experimental, developmental, or research work)

FAR 52.228-3 Workers' Compensation Insurance (Defense Base Act) (Apr. 1984)

FAR 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas (Apr. 1984)

FAR 52.228-5 Insurance—Work on a Government Installation (Jan. 1997) (applies when the subcontract or Order requires work on a Federal government installation)

FAR 52.234-1 Industrial Resources Developed Under Defense Production Act Title III (Dec. 1994)

FAR 52.237-7 Indemnification and Medical Liability Insurance (Jan. 1997)

FAR 52.244-6 Subcontracts for Commercial Items (Apr. 2003) (applies when the subcontract or Order involves the acquisition of “commercial items” as that term is defined in FAR 52.202-1)

FAR 52.245-18 Special Test Equipment (Feb. 1993) (applies when the subcontract or Order involves “special test equipment” as defined in the clause)

FAR 52.247-63 Preferences for U.S.-Flag Air Carriers (June 2003) (applies when the subcontract or Order may involve international air transportation)

FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr. 2003) (excluding (e)(4)) (applies when the subcontract or Order involves the transport of equipment, materials, or commodities in ocean vessels)

DFARS 252.204-7000 Disclosure of Information (Dec. 1991)

DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Apr. 1993) OR Alternate I (Nov. 1995) (applies when the subcontract or

Order requires, may require, or permits the subcontractor to treat or dispose of non-DOD-owned toxic or hazardous materials)

DFARS 252.225-7014 Preference for Domestic Specialty Metals (Apr. 2003) (applies to subcontracts or Orders involving “specialty metal” as defined in the clause)

DFARS 252.227-7013 Rights in Technical Data—Noncommercial Items (Nov. 1995) (applies when the subcontract or Order involves technical data for noncommercial items that is to be delivered to the government)

DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (June 1995) (applies when the subcontract or Order involves noncommercial computer software or computer software documentation that is to be delivered to the government)

DFARS 252.227-7016 Rights in Bid or Proposal Information (June 1995)

DFARS 252.227-7019 Validation of Asserted Restrictions—Computer Software (June 1995) (applies only when the subcontract or Order involves furnishing computer software to the government)

DFARS 252.227-7034 Patents—Subcontracts (Apr. 1984) (applies when the subcontract or Order involves experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization)

DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (Sept. 1999) (applies when the subcontract or Order involves the delivery of technical data, except when the purchase relates to “commercial items” as defined in FAR 52.202-1)

DFARS 252.235-7003 Frequency Authorization (Dec. 1991) (applies when the subcontract or Order involves the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required)

DFARS 252.247-7023 Transportation of Supplies by Sea (May 2002) (paragraphs (a) through (e) and (h))

DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000)

## **CLAUSES APPLICABLE TO CONSTRUCTION WORK WITHIN THE UNITED STATES REGARDLESS OF VALUE**

FAR 52.222-6 Davis-Bacon Act (Feb. 1995)

FAR 52.222-7 Withholding of Funds (Feb. 1988)

FAR 52.222-8 Payrolls and Basic Records (Feb. 1988)

FAR 52.222-9 Apprentices and Trainees (Feb. 1988)

- FAR 52.222-10 Compliance with Copeland Act Requirements (Feb. 1988)
- FAR 52.222-11 Subcontracts (Labor Standards) (Feb. 1988)
- FAR 52.222-12 Contract Termination—Debarment (Feb. 1988)
- FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (Feb. 1988)
- FAR 52.222-14 Disputes Concerning Labor Standards (Feb. 1988)
- FAR 52.222-15 Certification of Eligibility (Feb. 1988)
- FAR 52.222-17 Labor Standards for Construction Work—Facilities Contracts (Feb. 1988)
- FAR 52.222-27 Affirmative Action Compliance Requirements for Construction (Feb. 1999) (for subcontracts in excess of \$10,000 involving the construction trade)
- DFARS 252.222-7000 Restrictions on Employment of Personnel (March 2000)
- DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (March 2000)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS EXCEEDING \$10,000**

- FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS FOR \$25,000 OR MORE**

- FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (July 1995)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec. 2001)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec. 2001)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS EXCEEDING \$100,000**

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (July 1995)
- FAR 52.203-7 Anti-Kickback Procedures (July 1995) (excluding subparagraph (c)(1))
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 2003)

FAR 52.215-2 Audit and Records—Negotiation (June 1999)

FAR 52.215-14 Integrity of Unit Prices (Oct. 1997) (excluding paragraph (b))

FAR 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation (Sept. 2000) (paragraphs (a) through (d))

FAR 52.223-13 Certification of Toxic Chemical Release Reporting (June 2003)

FAR 52.223-14 Toxic Chemical Release Reporting (June 2003) (except paragraph (e))

FAR 52.227-1 Authorization and Consent (July 1995)

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Aug. 1996)

FAR 52.248-1 Value Engineering (Feb. 2000)

DFARS 252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (March 1999)

DFARS 252.209-7000 Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Nov. 1995)

DFARS 252.247-7023 Transportation of Supplies by Sea (May 2002)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS EXCEEDING \$500,000**

FAR 52.219-9 Small Business Subcontracting Plan (Jan. 2002)

FAR 52.230-2 Cost Accounting Standards (Apr. 1998)

FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (Apr. 1998)

FAR 52.230-5 Cost Accounting Standards—Educational Institutions (Apr. 1998)

FAR 52.230-6 Administration of Cost Accounting Standards (Nov. 1999)

DFARS 252.249-7002 Notification of Proposed Program Termination or Reduction (Dec. 1996)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS EXCEEDING \$550,000**

FAR 52.214-26 Audit and Records—Sealed Bidding (Oct. 1997) (applies only if the Federal government contract was awarded by sealed bidding and the subcontract is expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data, currently set at \$550,000)

FAR 52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1997) (applies only if the Federal government contract was awarded by sealed bidding and the subcontract is expected to exceed the threshold in FAR 15.403-4(a)(1) for submission of cost or pricing data, currently set at \$550,000)

FAR 52.215-12 Subcontractor Cost or Pricing Data (Oct. 1997)

FAR 52.215-13 Subcontractor Cost or Pricing Data—Modifications (Oct. 1997)

**CLAUSES APPLICABLE TO PURCHASES OF NONCOMMERCIAL ITEMS EXCEEDING \$1 MILLION**

DFARS 252.211-7000 Acquisition Streamlining (Dec. 1991)

**ADDITIONAL CLAUSES APPLICABLE TO THE ORDER**

FAR 52.202-1 Definitions (Dec. 2001)

FAR 52.211-5 Material Requirements (Aug. 2000)

FAR 52.211-15 Defense Priority and Allocation Requirements (Sept. 1990)

FAR 52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1997)

FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (Oct. 1997)

FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications (Oct. 1997)

FAR 52.219-8 Utilization of Small Business Concerns (Oct. 2000)

FAR 52.222-20 Walsh-Healey Public Contracts Act (Dec. 1996)

FAR 52.225-1 Buy American Act—Supplies (June 2003)

FAR 52.225-3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act (June 2003)

FAR 52.225-5 Trade Agreements (June 2003)

FAR 52.225-11 Buy American Act—Construction Materials Under Trade Agreements (June 2003)

FAR 52.225-15 Sanctioned European Union Country End Products (Feb. 2000)

FAR 52.227-14 Rights in Data—General (June 1987)

DFARS 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DOD Contracts) (Apr. 1996)

DFARS 252.225-7001 Buy American Act and Balance of Payments Program (Apr. 2003)

DFARS 252.225-7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Apr. 2003)

## **CLAUSES APPLICABLE TO FEDERAL GRANTS**

If the Order involves the use of funds from a Federal government grant—or funds from a subcontract at any tier relating to a Federal government grant—in addition to all of the applicable clauses contained above, the following *selected* clauses from OMB Circular A-110 are incorporated into and form a part of the terms and conditions of the Order. The full text of OMB Circular A-110 may be found at

<http://www.whitehouse.gov/omb/circulars/a110/a110.html>. Seller agrees to flow down all applicable clauses from OMB Circular A-110 to lower-tier subcontractors.

**1. Equal Employment Opportunity** – Seller agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)** – If the Order is in excess of \$2000 and pertains to construction or repair, Seller shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides in part that Seller shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which it is otherwise entitled.

**3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** – – If the Order is in excess of \$2000 and pertains to construction or repair, and further, if required by Federal program legislation, Seller shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Seller is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Seller shall be required to pay wages not less than once a week.

**4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** - If the Order is in excess of \$2000 and pertains to construction or repair, or if it is in

excess of \$2500 and involves the employment of mechanics or laborers, Seller shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, Seller shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**5. Rights to Inventions Made Under a Contract or Agreement** – If the Order is for the performance of experimental, developmental, or research work Seller shall provide for the rights of the Federal Government and the University in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended** – If the Order is in excess of \$100,000 Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** –If the Order is for \$100,000 or more, Seller and its subcontractors shall file the certification required by this statute and associated regulations. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Yale.

**8. Debarment and Suspension (E.O.s 12549 and 12689)** – Seller represents and warrants that it is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by

agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If the Order exceeds the small purchase threshold, Seller shall provide to Yale the required certification regarding its exclusion status and that of its principal employees.

#### **CONFLICTS AMONG CLAUSES APPLICABLE TO THE ORDER**

In the event of any conflict among the clauses applicable to the Order, including those not applicable solely to federal grants and/or contracts, the most stringent clause will apply.

9/17/04