

January 21, 2004

Appendix L5

For subcontracts with educational institutions

PART I: COST ACCOUNTING STANDARDS-EDUCATIONAL INSTITUTION
(Apr 1998) (FAR 52.230-5, Revised to reflect changed parties)

(a) Unless the purchase order is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Seller, in connection with this purchase order, shall-

(1) (CAS-covered purchase orders Only). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Seller's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this purchase order shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Seller and which contain a Cost Accounting Standards (CAS) clause. If the Seller has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Seller's cost accounting practices in accumulating and reporting contract performance cost data concerning this purchase order. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this purchase order and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Seller's cost accounting practices be made after the date of this purchase order award, the change must be applied prospectively to this purchase order and the Disclosure Statement, if required, must be amended accordingly. If the purchase order price or cost allowance of this purchase order is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this purchase order or, if the Seller has submitted cost or pricing data, on the date of final agreement on price as shown on the Seller's signed certificate of current cost or pricing data. The Seller shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Seller. Such

compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this purchase order if the purchase order cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Seller is required to make to the Seller's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States and/or Buyer.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this purchase order.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this purchase order, if the purchase order cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of purchase order award, requires the Seller to make a change to the Seller's established cost accounting practices.

(5) Agree to an adjustment of the purchase order price or cost allowance, as appropriate, if the Seller or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States and/or Buyer. Such adjustment shall provide for recovery of the increased costs to the United States and/or the Buyer, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States and/or Buyer was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Seller made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Deleted.

(c) The Seller shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Seller shall include in all negotiated subcontracts which the Seller enters into, the substance of this clause and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the purchase order award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that-

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

PART II: ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999) (FAR 52.230-6, Revised to reflect changed parties)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this purchase order, the Seller shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the cognizant Contracting Officer and the Buyer a description of any cost accounting practice change, the total potential impact of the change on contracts and subcontracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other Seller business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards— Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards—Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and

Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards— Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Seller disagreement with the initial finding of noncompliance, within 60 days of the date the Seller is notified by the cognizant Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards—Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards—Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards—Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230- 5, Cost Accounting

Standards—Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract and subcontract from the date of failure to comply until the non-compliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the cognizant Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Seller's CAS-covered contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the cognizant Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3. (e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230- 5—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Seller's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Seller making the award.

(f) Notify the Contracting Officer and the Buyer in writing of any adjustments required to subcontracts under this purchase order and agree to an adjustment, based on them, to this purchase order price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the purchase order appropriately.

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

PART III: COMMUNICATIONS PROCEDURES AND INDEMNITY

Seller shall communicate and otherwise deal directly with the cognizant Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. Seller shall provide Buyer with copies of all communications between Seller and the Contracting Officer respecting the clauses of this Appendix L5; provided, Seller shall not be required to disclose to Buyer such communications containing information which is privileged and confidential to the Seller. Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense if Buyer is subjected to any liability as the result of a failure of the Seller or its subcontractors to comply with the requirements of Parts I and/or II of this Appendix L5.