

CONTRACT NO. HHSO100200600010C
FLOWDOWN REQUIREMENTS FOR
COMMERCIAL ITEM CONTRACTS

A INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were stated in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contract Disputes Act, 41 U.S.C. § 601, *et seq.*, shall have no application to this Contract. Any reference to “Disputes” or a “Disputes clause” shall mean the disputes provisions of this Contract.

B GOVERNMENT SUBCONTRACT

This contract is entered into by the parties in support of a U.S. Government contract. As used in the FAR clauses and other clauses incorporated by reference below and otherwise in this Contract:

1. “Commercial Item” means a Commercial Item as defined in FAR § 2.101.
2. “Contract” means this contract.
3. “Contracting Officer” shall mean the U.S. Government Contracting Officer for MEDIMMUNE’s government prime contract tender which this Contract is entered.
4. “Contractor” and “OFFEROR” means the SELLER, as defined in this Contract, acting as the immediate (first tier) subcontractor to MEDIMMUNE.
5. “Prime Contract” means the contract between MEDIMMUNE and the U.S. Government or between MEDIMMUNE and its higher-tier contractor who has a contract with the U.S. Government.
6. “Subcontract” means any contract placed by the contractor or lower-tier subcontractors under this Contract.

C NOTES

1. Substitute “MEDIMMUNE” for “Government” or “United States” throughout this clause.
2. Substitute “MEDIMMUNE Procurement Representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause.

D PRESERVATION OF THE GOVERNMENT’S RIGHTS

If MEDIMMUNE furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that MEDIMMUNE, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor’s use of such Furnished Items in support of other U. S. Government prime contracts.

E CLAUSES INCORPORATED BY REFERENCE

The following clauses from the Federal Acquisition Regulation (FAR) are hereby incorporated in the Contract by reference and shall have the same force and effect as if set forth in full text. The Vendor hereby acknowledges that is has in its possession or is otherwise familiar with all of the referenced clauses incorporated herein by reference and agrees to perform this Contract in accordance with the provisions of such referenced clauses and the other provisions of this Contract. The full text of the referenced clauses may be accessed electronically at various Internet sites, including <http://farsite.hill.af.mil/> and <http://www.arnet.gov>.

REFERENCE	TITLE
1.	The following FAR clauses apply to this Contract:
(a)	52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies)
(b)	52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Note 2 applies.)
(c)	52.222-21 PROHIBITION OF SEGREGATED

- (d) 52.222-26 FACILITIES (FEB 1999)
EQUAL OPPORTUNITY (APR 2002)
(Paragraphs (b)(1)-(11) apply.)
 - (e) 52.222-41 SERVICE CONTRACT ACT OF 1965 (DEC 2004)
(Applies if subcontract is subject to the Service Contract Act.)
 - (f) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (DEC 2003)
 - (g) 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2004)
 - (h) 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S. FLAG COMMERCIAL VESSELS (APR 2003)
2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:
- (a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)
3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$25,000:
- (a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)
4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000.
- (a) 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

5. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$500,000:

REFERENCE	TITLE
(a) 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2002) (Applicable if the Contractor is not a small business. Note 2 is applicable to paragraph (c) only. The Contractor's subcontracting plan is incorporated herein by reference.)

6. The following FAR clauses apply to this Contract as indicated:

(a) 52.204-2	SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information)
(b) 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001) (Applicable if the Work was manufactured with or contains ozone-depleting substances.)
(c) 52.225-1	BUY AMERICAN ACT-SUPPLIES (JUN 2003) (Applicable if the Work contains other than domestic components. Note 2 applies to the first time "Contracting Officer" is mentioned in paragraph (c).)
(d) 52.227-19	COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987) (Applicable only if existing computer software is to be delivered under this Contract.)
(e) 52.245-2	GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (MAY 2004) (Except for paragraphs (i) and (j), Note 1 applies except in the phrases "Government property," "Government-furnished property," and in references to title to property. Note 2 applies. The following is added as paragraph (m) "Seller shall provide to MEDIMMUNE immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of

property control system.” Disposition of property under paragraphs (i) and (j) shall be coordinated with MEDIMMUNE.)

F ADDITIONAL CLAUSES

1. 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees

Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)

(a) Definition. As used in this clause –

(1) “United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

- (c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.
- (d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B – Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.
- (e) The requirement to post the employee notice in paragraph (b) does not apply to –

- (1) Contractors and subcontractors that employ fewer than 15 persons;
 - (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;
 - (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
 - (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that –
 - (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
 - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or
 - (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States
- (f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall –
- (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

- (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or
 - (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.
- (g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B – Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interest of the United States.