

SECTION II  
 STANDARD TERMS AND CONDITIONS FOR FIXED PRICE CONTRACTS ESTABLISHED UNDER  
 THE RENEWABLE ENERGY PROGRAMS IN LATIN AMERICAN COUNTRIES  
 INDEX OF CLAUSES

THE FOLLOWING CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE SIGNATURE PAGE OR SECTION I.

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"A" CLAUSES APPLY AT ANY VALUE

CLAUSE A10 - DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) SANDIA

Sandia Corporation, a prime contractor of the United States Department of Energy, which operates Sandia National Laboratories under Contract No. DE-AC04-94AL85000.

(b) SCR - SANDIA CONTRACTING REPRESENTATIVE

The only person authorized to execute and/or administer this contract on behalf of Sandia or the authorized successor to such person. Where the FAR clauses are used substitute SCR for contracting officer.

(c) GOVERNMENT

The United States of America.

(d) DOE

The United States Department of Energy, the Secretary of Energy, or any duly authorized representative of the Secretary.

(e) CONTRACTOR

The Seller or the other party to the contract with Sandia.

(f) SUBCONTRACTS

Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(g) SDR - Sandia Delegated Representative

The person(s) who has been delegated limited authority as defined in Section I of this contract. THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SECTION I OF THIS CONTRACT. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT.

(h) FAR - The Federal Acquisition Regulation

(i) DEAR - The Department of Energy Acquisition Regulation

CLAUSE A11 - UNCLASSIFIED CONTRACT

This contract is not classified; therefore, there is no expressed or implied approval for origination, transmission, or receipt of classified documents under this contract.

CLAUSE A12 - ASSIGNMENT

This contract is assignable by Sandia to the Government or its designee. Any assignment by the Contractor of the work to be performed, in whole or in part, or of any other interest hereunder without Sandia's written consent, except an assignment confined solely to moneys due or to become due, shall be void. It is expressly agreed that any such assignment of moneys shall be void to the extent that it attempts to impose upon Sandia obligations to the assignee additional to the payment of such moneys, or to preclude Sandia from dealing solely and directly with the Contractor in all matters pertaining hereto, including the negotiation of amendments or settlements of amounts due.

CLAUSE A13 - RELEASES VOID

Sandia's and the Government's representatives shall not be required to waive or release any personal rights in connection with any visits to Contractor's premises and Contractor agrees that no such waiver or release shall be pleaded by Contractor in any action or proceeding.

Contractor will include the provisions of this clause in every subcontract under this contract.

CLAUSE A14 - NOTICE OF LABOR DISPUTES

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the SCR.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

CLAUSE A17 - DELEGATED REPRESENTATIVES

The SCR may delegate personnel as authorized representatives for such purposes as and to the extent specified in the delegation. Such delegation shall be in writing to the Contractor, and shall designate by name the personnel so delegated as authorized representatives. The Sandia Delegated Representatives (SDR) shall exercise no supervision over the Contractor's employees. THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SECTION I OF THIS CONTRACT. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT.

CLAUSE A19 - TERMS AND CONDITIONS

The terms and conditions stated in this contract are the only ones governing this transaction and cannot be changed or terminated orally. No terms and conditions appearing on any form originated by the Contractor shall be applicable.

CLAUSE A20 - PERMITS OR LICENSES

Except as otherwise directed by the SCR, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances (including, but not limited to, those pertaining to environment, safety, health, hazardous materials or waste matter) of the State, territory, and political subdivision in which the work under this contract is performed.

CLAUSE A23 - APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by, and this contract shall be interpreted in accordance with, the United States federal law.

CLAUSE A26 - OFFICIALS NOT TO BENEFIT (FAR 52.203-1)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent

that this contract is made with a corporation for the corporation's general benefit.

CLAUSE A27 - ORDER OF PRECEDENCE

This contract is subject only to the terms and conditions set forth in the following documents: Signature Page, Section I, and Section II of this contract and the specifications and drawings or other documents, if any, referenced therein. In case of conflict or inconsistency between or among one or more provisions of the above documents, the provisions of each document shall take precedence over the provisions of the other documents in the following order of priority: Section I, Signature Page, Section II, specifications, drawings, and other documents, if any.

Notwithstanding the above, in cases where there is a English and Spanish version of this contract or any of its related documents, the English version shall take precedence.

CLAUSE A30 - PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted.

CLAUSE A31 - TAXES

Except as may be otherwise provided in this contract, the price includes all applicable Federal, State, and Local taxes and duties.

CLAUSE A33 - TRAVEL

- (a) Any travel to the United States by Contractor personnel, in connection with work under this contract, requires advance written approval by the SCR.
- (b) Any amounts allowed for travel pursuant to Clause A34 herein shall be limited to amounts prescribed under the Federal Civilian Employee/Contractor Travel Expense Act of 1985 (P.L. 99-234).

CLAUSE A39 - NOTICE OF POTENTIAL DELAY

CONTRACTOR shall strictly comply with the delivery requirements of this Contract. Whenever the CONTRACTOR has knowledge that any actual or potential delay or threatened delay in the timely performance of this Contract, the CONTRACTOR shall immediately give notice thereof, confirmed in writing, including all relevant information with respect thereto, to Sandia. The CONTRACTOR agrees to insert the substance of this provision, including this sentence, in any subcontract hereunder, except that each such subcontract shall require the subcontractor to notify his next higher tier contractor of all relevant information with respect to such delays. Such notice is for informational purposes only and shall not be construed to relieve the CONTRACTOR of CONTRACTOR's obligation to comply with the Contract delivery requirements.

CLAUSE A40 - INSPECTION AND CORRECTION OF DEFECTS

- (a) Applies to Supplies
  - (1) All supplies (which term throughout this Clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by Sandia and DOE to the extent practicable at all

times and places including the period of manufacture, and in any event prior to acceptance.

- (2) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, Sandia shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the SCR, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies,

Sandia either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the costs occasioned Sandia thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Termination for Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the SCR may require the delivery of such supplies at a reduction in price which is equitable under the circumstances.

- (3) If Sandia or DOE inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of Sandia except as otherwise provided in this contract; provided, that in case of rejection, Sandia shall not be liable for any reduction in value of samples used in connection with such inspection or test.

- (4) Sandia reserves the right to charge to the Contractor any additional cost of Sandia inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect or accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on Sandia therefor.

- (5) The inspection and test by Sandia or DOE of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(b) Applies to Services

(1) All services performed by the Contractor under this contract shall be subject to inspection and test by Sandia and DOE to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. Sandia and DOE through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. Except as otherwise provided in this contract, acceptance of services performed under this contract shall be made at the place of performance as promptly as practicable after performance and shall be deemed to have been made no later than 60 days after the date of such performance, if acceptance has not been made earlier within such period.

(2) At any time during performance of this contract, but not later than six months (or such other period as may be provided in Section I) after acceptance of the services in accordance with the requirements of this contract, Sandia may require the Contractor to remedy by correction, as directed by the SCR, any services which at the time of performance thereof failed to comply with the requirements of this contract. Corrected services shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such correction and if such correction may be performed within the contract price, or the contract price as increased by Sandia, Sandia (i) may by contract or otherwise perform such correction [and charge to the Contractor any increased cost occasioned Sandia or the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made),] or (ii) may terminate this contract as provided in the "Termination for Default" clause of this contract.

(c) Applies to Supplies and Services

(1) Notwithstanding the provisions of paragraph (b)(2) above, Sandia may at any time require the Contractor to remedy by correction or replacement, without cost to Sandia, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of the Contractor's managers, superintendents, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the Contractor's business; (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or

(iv) all or substantially all of the Contractor's operations under this contract. Sandia may at any time also require the Contractor to remedy by correction or replacement, without cost to Sandia or the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(2) The provisions of this clause shall apply to any corrected or replacement services or materials.

(3) The Contractor shall provide and maintain an inspection system acceptable to Sandia covering the supplies, materials, fabrication methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to Sandia and DOE at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(4) Except as provided in this clause and as may be provided in Section I, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(5) Except as otherwise provided in Section I, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by Sandia or the Government, and delivered or otherwise made available to the Contractor) shall be governed by the provisions of Clause A60, "Property," of this contract.

(6) If any inspection or test is made by Sandia or DOE on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Sandia or DOE inspectors in the performance of their duties.

(7) All inspections and tests by Sandia and DOE shall be performed in such a manner as not to unduly delay the work under this contract.

CLAUSE A41 - CHANGES

(a) The SCR may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Sandia in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the SCR shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the SCR decides that the facts justify it, the SCR may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the SCR shall have the right to prescribe the manner of the disposition of the property.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

CLAUSE A42 - STOP-WORK ORDER (FAR 52.212-13 [8/89])

(a) The SCR may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause.

Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the SCR shall either:

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the "Termination for Default," or the "Termination for Convenience," clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The SCR shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if:

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the SCR decides the facts justify the action, the SCR may receive and act upon the claim asserted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for convenience, the SCR shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the SCR shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

CLAUSE A45 - TERMINATION FOR DEFAULT

(a) Termination for Default

(1) Sandia may, subject to paragraphs (c) and (d) below by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below; or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) Sandia's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the SCR) after receipt of the notice from the SCR specifying the failure.

(3) In the event that this contract is terminated in part, the Contractor shall continue to perform the portion of the work that was not terminated.

(b) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) acts of Sandia, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, and (10) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(c) If the failure to perform is caused by the default of a subcontractor of any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor

shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

- (d) If this contract is terminated for default, Sandia may require the Contractor to transfer title and deliver to Sandia, as directed by the SCR, (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract.

Upon direction of the SCR, the Contractor shall also protect and preserve property in its possession in which Sandia or the Government has an interest.

- (e) Sandia shall pay contract price for completed supplies, delivered and accepted. The Contractor and SCR shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property.
- (f) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued under the "Termination for Convenience" clause of this contract.

#### CLAUSE A46 - TERMINATION FOR CONVENIENCE

- (a) Sandia may terminate performance of work under this contract in whole or, from time to time, in part if the SCR determines that a termination is in Sandia's or the Government's interest. The SCR shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- (b) After receipt of a Notice of Termination, and except as directed by the SCR, the Contractor shall immediately:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to Sandia, as directed by the SCR, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Sandia shall have the right to settle or to pay any termination settlement proposal(s) arising out of those terminations.
- (5) With approval or ratification to the extent required by the SCR, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the SCR, transfer title to the Government and deliver to Sandia

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Sandia.

- (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary, or that the SCR may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which Sandia or the Government has or may acquire an interest.

- (c) After termination, the Contractor shall submit a final termination settlement proposal to the SCR in the form and with the certification prescribed by the SCR. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the SCR upon written request from the Contractor within this 1 year period.

- (d) The Contractor and the SCR will negotiate and reach an agreement upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, shall not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount.

- (e) If the Contractor and the SCR fail to agree on the whole amount to be paid the Contractor because of the termination of work, the SCR shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:

- (1) The contract price for completed supplies or services accepted by Sandia (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

- (2) The total of:
  - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (i) above.

- (f) If the termination is partial, the Contractor may file a proposal with the SCR for an equitable adjustment of the price(s) of the continued

portion of the contract. The SCR shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the SCR.

so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

#### CLAUSE A50 - RELEASE OF INFORMATION

No information relating to this contract shall be released other than to Contractor's employees or those of Contractor's subcontractors requiring the information for performance of their duties, without advance written approval of the SCR. In no event shall the interest of Sandia or the DOE or the Government in this contract be indicated in any advertising or publicity without advance written approval of the SCR.

#### CLAUSE A53 - SANDIA PROVIDED INFORMATION

(a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto (hereinafter called "material"), furnished by Sandia to the Contractor shall remain the property of the Government.

(b) If any material furnished by Sandia to the Contractor is of special significance in the sense that its use by the Contractor for other than performance of this contract or its disclosure to others might give competitive advantage to the Contractor or the recipient or be prejudicial to the best interests of the Government, then such material shall be used only for the purpose of enabling performance of this contract and the Contractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this contract.

(c) Technical data, as defined in DEAR Subpart 927.401, may contain patentable or proprietary information and is not to be disclosed to others or used for other than quotation purposes or contract performance.

#### CLAUSE A60 - PROPERTY

This clause is applicable if this contract provides (i) that Sandia will furnish Government-owned property to the Contractor (hereinafter referred to as "Sandia-Furnished U.S. Government Property") or (ii) that the Contractor will acquire property.

- (a) Sandia-Furnished U.S. Government Property
- (1) Sandia shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Sandia-Furnished U.S. Government Property described in Section I together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Sandia-Furnished U.S. Government Property").
  - (2) The delivery or performance dates for this contract are based upon the expectation that Sandia-Furnished U.S. Government Property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in Section I or, if not

(3) If Sandia-Furnished U.S. Government Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the SCR, detailing the facts, and, as directed by the SCR and at Sandia expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the SCR shall make an equitable adjustment.

(4) If Sandia-Furnished U.S. Government Property is not delivered to the Contractor by the required time, the SCR shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Title in Property

Unless otherwise provided in this contract, title to all Sandia-Furnished U.S. Government Property shall pass to the Contractor upon the Contractor's receipt of the property. All responsibility, including repair or replacement of property for which the Contractor holds title, shall be accomplished by the Contractor at its own expense.

#### CLAUSE A70 - EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the SCR.

#### CLAUSE A72 - RESPONSIBILITY FOR SUPPLIES

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where Sandia takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to Sandia upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Acceptance by Sandia or delivery of the supplies to Sandia at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or

employees of Sandia or the Government acting within the scope of their employment.

of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

CLAUSE A74 - WORKMANSHIP AND MATERIALS

(a) Grade or Workmanship and Materials. Unless otherwise directed by the SCR or expressly provided for by specifications issued under this contract:

(1) All workmanship shall be first class; and

(2) All articles, equipment, and materials incorporated in the work are to be:

(i) New and of the most suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of the SCR.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the SCR shall decide the question of equality.

(b) Samples and Test Results. If the SCR so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

CLAUSE A91 - ANTI-KICKBACK PROCEDURES (FAR 52.203-7)

(a) Definitions

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The contracting officer may (i) offset the amount of the kickback against any moneys owed by U.S. under this prime contract; and/or (ii) direct that the prime Contractor withhold from sums owed a subcontractor under this prime contract, moneys withheld, the amount of the kickback. The contracting officer may order that moneys withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those moneys under subdivision (c)(43)(i) of this clause. In either case, the Contractor shall notify the contracting officer when the moneys are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5), but excepting subparagraph (c)(1), in all subcontracts under this contract.



CLAUSE A92 - COVENANT AGAINST CONTINGENT FEES  
(DEAR 970.5203-1 [4/84])

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, Sandia shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Sandia or Government contracts nor holds itself out as being able to obtain any Sandia or Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Sandia or Government contracts nor holds out as being able to obtain any Sandia or Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Sandia or a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Sandia or a Government employee or officer to give consideration or to act regarding a Sandia or a Government contract on any basis other than the merits of the matter.

CLAUSE A95 - RESTRICTIONS ON SUBCONTRACTOR SALES TO SANDIA OR THE GOVERNMENT (FAR 52.203-6)

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

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

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c) in all subcontracts under this contract.

Clause A97 - GRATUITIES (FAR 52.203-3)

(a) Contractor's right to proceed may be terminated if, after notice and hearing, Sandia determines that the Contractor agent or other representative (i) offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of Sandia or the Government; and (ii) intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.  
(c) If this contract is terminated under paragraph (a) above, the Government is entitled --

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than three nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

THE FOLLOWING "D" CLAUSE APPLIES ONLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$10,000

CLAUSE D41 - REPORTING OF ROYALTIES

If this contract is in an amount which exceeds \$10,000, and any royalty payments are directly involved in the contract or are reflected in the contract price to Sandia or the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the SCR) during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of Sandia or of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. ("Patent Counsel," as used in this clause, means the Patent Attorney, DOE, Albuquerque Operations Office, P. O. Box 5400, Albuquerque, New Mexico 87115.)

THE FOLLOWING "E" CLAUSES APPLY ONLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$25,000

CLAUSE E20 - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (FAR 52.227-2 [4/84])

(a) The Contractor shall report to the SCR, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against Sandia or the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to Sandia or the Government, when requested by the SCR, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of Sandia or the

Government except where the Contractor has agreed to indemnify Sandia or the Government.

- (c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those of material, supplies, models, samples, or design or testing services) expected to exceed the dollar amount set forth in 13.000 of the FAR.

CLAUSE E40 - PREFERENCE FOR U.S.-FLAG AIR CARRIERS

- (a) As used in this clause:
- (1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- (2) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
- (3) "U.S.-flag air carrier" means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517)(Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditure from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on invoices or vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY  
OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see FAR subpart 47.403): Contractor shall state the reasons.

- (e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

CLAUSE E41 - PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

- (a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:
- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provisions for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to the SCR.
- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information/statement: (A) Statement: Sponsor - DOE; (B) Name of vessel; (C) Vessel flag of registry; (D) Date of loading; (E) Port of loading; (F) Port of final discharge; (G) Description of commodity; (H) Gross weight in pounds and cubic feet if available; (I) Total ocean freight revenue in U.S. dollars.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders exceeding \$25,000 under this contract.
- (e) The requirement in paragraph (a) does not apply to:
- (1) Purchase orders and contracts not in excess of \$25,000;
- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

- (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
  - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

"R" CLAUSES APPLY TO REQUESTS FOR QUOTATION (RFQ) OF ANY VALUE (offeror)

CLAUSE R12 - NEW SUPPLIES

Except as otherwise provided in the Statement of Work or in Contractor's quotation, the quoter certifies that the supplies to be furnished are new (not used or reconditioned and not of such age or so deteriorated as to impair their usefulness or safety).

CLAUSE R13 - GOVERNMENT MATERIAL/EQUIPMENT

Except as provided for in Section I, quoter must list the Government material/equipment quoter will use in the performance of the Statement of Work in this RFQ and provide details concerning its use.

CLAUSE R23 - FALSE STATEMENTS IN QUOTATIONS

Quoters must provide full, accurate, and complete information as required by this RFQ and its attachments. The penalty for making false statements in quotations is prescribed in 18 U.S.C. 1001.