

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. M100	3. EFFECTIVE DATE October 1, 2002	4. REQUISITION/PURCHASE REQUEST NO. N/A	5. PROJECT NO. (IF APPLICABLE)
6. ISSUED BY U. S. Department of Energy Savannah River Operations Office Contracts Management Division P.O. Box A Aiken, SC 29802		7. ADMINISTERED BY (IF OTHER THAN ITEM 6)	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Westinghouse Savannah River Company LLC P.O. Box 616 Aiken, SC 29802		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC09-96SR18500	
		10B. DATED (SEE ITEM 13) 08/06/96; Effective 10/01/96	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS			

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers  is extended,  is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  
(a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
N/A

13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

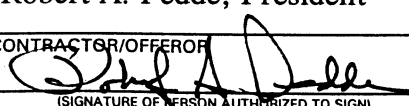
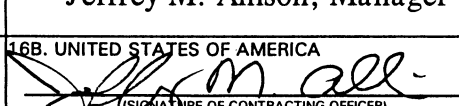
( X )	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES such as changes in the paying office, appropriation data, etc. SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) <b>Mutual Agreement and DEAR 970.5215-1 - Total Available Fee: Base Fee Amount and Performance Fee Amount</b>

E. IMPORTANT: Contractor  is not,  is required to sign and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

(Continued on Page 2)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A. NAME AND TITLE OF SIGNER (Type or print) Robert A. Pedde, President		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Jeffrey M. Allison, Manager	
15b. CONTRACTOR/OFFEROR  (SIGNATURE OF PERSON AUTHORIZED TO SIGN)	15c. DATE SIGNED 6/12/03	16b. UNITED STATES OF AMERICA  (SIGNATURE OF CONTRACTING OFFICER)	16c. DATE SIGNED 6/18/03

14. Description of Amendment/Modification (Continued)

Purpose: The purpose of this modification is to incorporate the Environmental Management Clean-Up Incentive into the contract, make the necessary contract changes to implement this incentive and updates the contract terms and conditions.

- a. This modification replaces the previous contract terms and conditions in their entirety without prejudice to either parties rights for events, incidents or actions which transpired prior to the date of signing of the modification.
- b. The contractor shall continue to perform under the existing Work Authorization Performance Baseline (WAPB), in effect as of the date of signing of this modification, until such time as the EM Contract Performance Baseline is approved by DOE and the current WAPB is replaced by the Work Authorization/Execution Plan contemplated by this modification (see Part I - The Schedule, Section C, paragraph C.2).
- c. The funds previously obligated to the contract prior to the date of signing of this modification remain available pursuant to the clause in Section I entitled, Obligation of Funds.
- d. All of terms and conditions remain unchanged except as set forth herein.

Attachments: Sections B – I w/Attachments

End of Standard Form 30

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**PART I - THE SCHEDULE**  
**SECTIONS B THROUGH H**

**Part I - The Schedule**

**SECTIONS B THROUGH H**

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**Part I - The Schedule**

**Section B**

**SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES BEING ACQUIRED**

The Contractor shall, in accordance with the terms of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts so as to carry out in an efficient and effective manner all necessary and related services to manage and operate the Government-owned Savannah River Site, located near Aiken, South Carolina, as described in Section C, Statement of Work, or as may be directed by the Contracting Officer within the scope of this Contract.

For work for the National Nuclear Security Administration (NNSA), the Work Authorization and Control Process and the Change Control process set forth in Section II of the Savannah River Site (SRS) Management Plan are hereby incorporated and made a part of this contract. The Environmental Management (EM) closure incentive work requirements are defined in the Performance Evaluation and Measurement Plan (PEMP) PART II-B and will be funded as described below. Changes to the EM work requirements shall be by written formal modification and change control. The EM performance baseline shall be managed in accordance with the provision in PEMP Part II-B entitled, Project Control Systems and Reporting Requirements.

**B.2 ESTIMATED COST AND AVAILABLE FEE**

(a) Estimated Cost

The estimated cost of the contract is the total of funding provided from October 1, 1996 to September 30, 2000, which totals \$5,383,459,753.41 plus an estimated budgetary cost of \$9,275,000,000 for the period October 1, 2000 through December 31, 2006, for a total estimated cost of \$14,762,609,753.41.

The above estimated cost excludes any costs for emerging nonproliferation projects and the Estimated Cost for performance shall be as established in the annual Work Authorization and Performance Baseline for NNSA work plus an estimated EM budget for each fiscal year as follows:

FY2003	\$1,079,843,000
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FY2004	\$1,162,416,000
FY2005	\$1,217,305,000
FY2006	\$1,155,000,000
FY2007	\$301,000,000

Plus additional costs for any phase-in/phase-out services in December 2006, if required.

(b) Fee:

The Maximum Available Fee covering the period October 1, 2001 through the end of the contract term, is \$735,412,095, inclusive of all EM and NNSA fee incentives. This amount is subject to equitable adjustment as provided for under the terms of this contract, and payable as provided for in the Performance Evaluation and Measurement Plan (PEMP) and the terms of this contract.

The fee amount associated with the EM incentive established under this contract modification is included in the above EM funding levels and there will be no separate funding provided for payment of any EM fee.

This modification supercedes any and all existing EM PBIs and EM PBI fee payments made after September 30, 2002. All fees paid for performance of EM work under Performance Based Incentives on October 1, 2001 through September 30, 2002, including provisional fee payments in the approximate amount of \$6,520,000, shall be considered final payments as of the date of the Contracting Officer's signature on this modification. Final fee payments made from October 1, 2002 through the date of signing of this contract modification shall also be retained by the contractor as final payments, except as may be otherwise provided by law. Provisional fee payments on EM PBIs made since October 1, 2002, shall remain provisional and become part of the available fee under the EM closure incentive established in this modification. After June 30, 2003, the contractor is authorized to make a request for three quarterly provisional fee payments for the period October 1, 2002, through June 30, 2003, in the amount of \$18,400,000 per quarter with an offset for any final and provisional EM PBI payments made from October 1, 2002, through June 30, 2003. The invoice shall separately identify by PBI the final and provisional fee amounts paid prior to the date of the invoice. Except for EM PBI invoices for work completed in accordance with the PBI terms and which have been submitted to DOE for approval as of the signing date of this modification, no further EM PBI payments will be made by the DOE after signature of this modification by the Contracting Officer.

The Contractor shall reimburse (by direct reimbursement or by off-sets against PBI payments) the Government for any fee amount drawn down but not earned as a result of fee determinations by the SR Manager/Senior NNSA Official. Any reimbursements



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due the Government shall be made as described in the clause in Section I entitled, FAR 52.232-17 Interest (Jun 1996).

**B.3 AVAILABILITY OF APPROPRIATED FUNDS**

Except as may be specifically provided to the contrary in the Contract Clause entitled "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE may legally spend for such purposes.

**B.4 OBLIGATION OF FUNDS**

Pursuant to the Contract Clause entitled "Obligation of Funds," the total amount obligated by the Government with respect to this Contract is \$8,945,177,778.25 (as of Modification No. A099).

**B.5 Supplemental Fee Payment Provisions**

The NNSA and EM incentives established under this contract are contained in the Performance Evaluation and Measurement Plan. Provisions regarding payment of the incentives are included in the PEMP. Special provisions regarding payment of an incentive may also be included in the incentive itself.

**Part I - The Schedule**

**Section C**

**DESCRIPTION/SPECIFICATION/WORK STATEMENT**  
**DESCRIPTION OF WORK AND SERVICES**

**STATEMENT OF WORK**

**C.1 OVERVIEW**

The general management goals and objectives for the Savannah River Site (SRS) are outlined in the SRS Strategic Plan required by the Government Performance and Requirements Act and the EM Performance Management Plan (PMP). The SRS Strategic Plan addresses goals and objectives for the missions of the Site, including those of the National Nuclear Security Administration (NNSA). The EM PMP addresses the Accelerated Clean-Up objectives.

Performance expectations of this contract are generally defined in the SRS Strategic Plan and the EM PMP. Specific performance requirements are defined in this Section C, PEMP, PART II-B for the EM closure incentive and the NNSA work requirements are defined in the Work Authorization/Execution Plan (WA/EP), a successor document to the current Work Authorization and Performance Baseline [WAPB]. These documents, and superseding versions thereto, are incorporated by reference into this contract. The EM closure work will be incorporated into the WA/EP for accounting and management purposes but the EM performance baseline is not incorporated into nor an integral part of the contract. The EM contract performance baseline will however incorporate all aspects of performance. Contractor shall safely and cost-effectively implement the management objectives and performance requirements.

- a. The Contractor shall integrate and manage the safe and effective operation and maintenance of existing and new facilities of the U.S. Department of Energy (DOE) at the Savannah River Site (SRS), situated within Aiken, Barnwell and Allendale Counties of South Carolina to meet the general management objectives. The Contractor shall use systems engineering techniques to integrate the resources and activities of the SRS. The Contractor is responsible for integrating and executing all work under this contract, including but not limited to, management of its personnel, all components of the Contractor, and all subcontractors at all tiers. The Contractor shall perform in accordance with the terms and conditions herein provided and in accordance with such direction and instruction, which DOE through the Savannah River Operations Office (SR) may provide the Contractor in writing. The Contractor shall implement Departmental requirements including environmental, safety, and health requirements. In the absence of direction and instruction from DOE, the Contractor shall use its expertise and best commercial practices and industry standards in all matters pertaining to the performance of this contract.

- b. The Contractor shall put in place a management team and organizational structure which will enable SRS to reach a position of nationally and internationally recognized applied scientific and engineering excellence. The achievement of enhanced excellence is considered to be the degree to which the capabilities of industry and academia are integrated into the work conducted at SRS using competition as an important driver. The Contractor is expected to benefit from its corporate assets and view the SRS as a national strategic asset to be used in rapidly and effectively applying the results of government and industry sponsored research and development to national problems through privatization and technology transfer.
  
- c. The Contractor shall bring a highly innovative, entrepreneurial and efficient total quality management program to this effort. It shall challenge the status-quo and existing paradigms in formulating and implementing safe, high quality, timely and cost-effective programs and operations at SRS. The Contractor shall use subcontracting (fixed price is preferred when appropriate) and other innovative methods of accomplishing this scope of work. Decisions regarding subcontracting and commercialization initiatives shall be supported through the development of a make-or-buy program emphasizing efficient performance on a least cost basis. The Contractor shall tailor the application of contract requirements to the work being performed to be cost effective while accomplishing all work in a manner that minimizes waste and fully complies with all compliance agreements, pollution abatement programs and permit requirements. (as required by Laws, Regulations and Directives clause). In compliance with the federal initiative to "Streamline Procurement Through Electronic Commerce," the Contractor shall to the extent possible, and within available funding, develop an electronic commerce system that will result in a paperless, automated, and integrated procurement/payment system. Best of class industry baselines should be used to determine and justify staffing requirements as well as cost estimates for maintenance and construction.
  
- d. Safety and environmental awareness must be integrated as core values into all activities. Work must be accomplished in a manner that protects the environment and the safety and health of workers and the public and is in compliance with applicable regulatory and other requirements. The Contractor is expected to identify hazards, manage risks, identify and implement good management practices site wide and make improvements in environment, safety and health (ES&H) performance. The Contractor shall implement recommendations from other organizations (such as the Defense Nuclear Facilities Safety Board, state and federal regulatory agencies) which are accepted by DOE and directed by the Contracting Officer.

## **C.2 WORK AUTHORIZATION/EXECUTION PLAN**

In addition to the general requirements of this Statement of Work, NNSA work to be accomplished under this contract is defined for each Fiscal Year in the WA/EP (a successor document to the current Work Authorization and Performance Plan). EM closure performance requirements are defined in

PEMP, PART II-B. The EM performance baseline will be incorporated into the WA/EP for accounting and management purposes but is not incorporated into nor an integral part of the contract. The specific work to be executed under this contract shall be planned, authorized, and controlled using either the process and procedures set forth in the DOE SRS Management Plan, via formal technical direction as contemplated either by the clause in Section I entitled, Technical Direction or the Clause in Section H, entitled Performance/Technical Direction. The DOE SRS Management Plan document describes the WA/EP process under which NNSA work, costs/resources, milestones, and other performance measures and criteria are established and controlled. The WA/EP incorporates and integrates all other work control systems such as the Environmental Management Integrated Planning and Budgeting System and capital project baseline control systems. The SRS Strategic Plan, the EM PMP, the SRS Management Plan and the NNSA portion of the WA/EP, and all future modifications thereto to these documents, are hereby incorporated into this contract by reference. The Contractor shall continually improve work control and site management systems and propose potential objectives, criteria, and measures for all work areas.

### **C.3 BUSINESS AREAS**

The SRS missions are identified in the SRS Strategic Plan, including the current National Nuclear Security Administration goals and objectives. Inherent in these activities is corporate management. In accomplishing work in all business areas, the Contractor shall:

- maximize the use of competition and fixed price subcontracting, where appropriate;
- provide direction in the application of cost effective methods and innovative technologies for the total program;
- maintain an agile, flexible management structure;
- implement effective integrated planning in a timely, cost-effective manner;
- use clearly stated, results-oriented performance measures to quantitatively compare and trend performance at the SRS with that of other best of class government and industry organizations;
- provide services using an effective and responsive business management plan and project control system;
- maintaining appropriate baselines; and
- actively support DOE in its interactions with the regulatory agencies as well as other SRS Contractors to fulfill contract requirements.

a. Environmental Restoration

The Contractor shall provide for the identification, characterization, and assessment of waste units and affected groundwater; prepare closure plans; manage the remediation of waste sites; and provide for the monitoring of inactive waste and groundwater units once they are closed. The Contractor shall accelerate early remediation actions consistent with a risk based approach and regulatory requirements and shall ensure the protection of the health and safety of the workers and public. The Contractor shall integrate all activities to meet the requirements specified in the Federal Facilities Agreement (FFA) between DOE, the Environmental Protection Agency (EPA) and the State of South Carolina. The contractor shall provide support in the development of alternative long range strategies for responding to statutory mandates.

b. Deactivation and Decommissioning

The contractor shall deactivate and decommission (D&D) facilities for which no alternate use can be found as required by PEMP, PART II-B. . The Contractor shall provide the overall management of the D&D program at the SRS, except for those activities for which DOE contracts directly with third parties. D&D activities may include characterization, risk analysis, evaluation of alternatives, stabilization, and final closure. All D&D activities shall be conducted through an integrated approach with environmental remediation requirements. The contractor shall dispose of other structures and facilities related to facilities identified in PEMP, PART II-B, such as sheds, canopies, air conditioning units and excess trailers.

c. Technology Research, Development and Transfer

A key objective during this contract shall be to develop and retain the technical capability needed to support on-going and potential new missions. The Contractor shall establish the Site as a preferred partner for industry, universities, and small businesses in developing leading edge technologies to reduce the cost of accomplishing Site work. The Contractor shall develop, maintain, and fully utilize appropriate world class research and development capabilities and maximize private sector involvement in SRS technologies and activities consistent with the best commercial practices and national competitiveness objectives.

- (1) Research and development (R&D) shall be performed at the SRS in support of its programmatic missions. This R&D is performed primarily at the Savannah River Technology Center (SRTC), but it is not limited to SRTC. The Contractor shall maintain SRS core competencies that are necessary to support assigned missions and, in addition, shall expand SRS core competencies and improve them in areas of significant potential growth, such as environmental technologies. This shall be done through various approaches, including the expansion of Work for Others programs (see paragraph C.4 below) and cooperative arrangements with industry and universities.

- (2) The SRS has a special role in support of Environmental Technology Development (ETD). The SRS has been named one of two "Lead Laboratories" in support of the ETD mission. In that role, the Contractor shall provide applied research and development capabilities to the national ETD program.
- (3) The SRS has an obligation to identify ways to share with industry derived benefits from its sponsored programmatic research and development. The Contractor shall routinely, as a matter of conducting business, identify and evaluate technologies that are potential candidates for commercial exploitation. The Contractor shall establish industry partnerships that will allow the appropriate sharing of technologies using all means allowable under The Stevenson-Wydler Technology Innovation Act of 1980, such as Cooperative Research and Development Agreements, licensing, sharing facilities, and personnel exchanges. The Contractor shall dramatically increase the visibility of the SRS with industry and government agencies to maximize the potential to share its resources. Furthermore, with the continuing budget pressures, the Contractor shall continually seek ways to leverage program funding by partnerships and sharing costs with industry in areas of mutual benefit.

d. Nuclear Facility Operations (including Nuclear Materials Management in Support of the National Nuclear Security Administration)

The Contractor shall manage the nuclear program to stabilize and dispose of high level waste; support national defense requirements by processing tritium and supporting the national planning effort associated with long term tritium production and maintenance; and stabilize and store, or disposition, existing inventories of nuclear material. The Contractor shall maintain a corporate perspective in the planning, integration, efficient management and teamwork to ensure successful shipments throughout the DOE Complex and other Government agencies. The Contractor shall demonstrate its commitment to a corporate perspective through teamwork with Rocky Flats Environmental Technology Site, Mound, and other DOE sites and government agencies. . The contractor shall work in a collaborative effort with others to meet the agreed upon schedules for the receipt of critical mission essential materials to and from SRS, (i.e. receipt of plutonium shipments in support of the RFETS deinventory, receipt of transuranic waste from Mound, Spent Fuel receipts and shipments, Tritium, etc.).

(1) High Level Waste

The contractor shall accelerate the disposition of high level waste currently stored in underground storage tanks at SRS. The Contractor shall meet the commitments set forth in the Site Treatment Plan and the Federal Facilities agreement for the treatment of high level waste and closure of high level waste storage tanks. The contractor shall

apply sound engineering and scientific techniques in the management, treatment and disposal of high level waste at SRS.

(2) National Defense

The Contractor shall safely support National Defense requirements (primarily the processing of tritium). The tritium function must be configured such that a new lower set of production requirements is reliably met at a reduced total cost. For tritium operations at the SRS, the Contractor shall support the long term tritium production and processing capabilities. DOE is constructing new facilities to process tritium and to disposition plutonium. For activities for disposition of plutonium, the Contractor will be expected to support the construction and operation of facilities for which SRS has been selected.

The SRS is a leading research facility for hydrogen isotopes and is involved in exploring additional commercial applications for its technology. Research and development activities shall focus on understanding phenomena related to the effects of tritium on materials and processes.

(3) Stabilization of Nuclear Materials

The Contractor shall safely and effectively manage and conduct activities to place nuclear facilities and nuclear materials into a safe and stable form. The Contractor shall stabilize, deinventory, and transition the facilities to deactivation and decommissioning. The Contractor shall analyze and recommend alternatives for upgrading to provide cost effective and safe storage for all of the nuclear materials at the SRS. These materials include spent nuclear fuel which is stored at the Site. The fuel may have originated from past Site operations or from U.S. and foreign research reactors.

e. Solid Waste

The Contractor shall manage the solid waste program to safely and effectively prevent and/or minimize the generation of solid waste to include hazardous, low level, transuranic, mixed, and municipal sanitary wastes. The Contractor shall ensure that the handling, treatment, storage, transportation and disposal of existing and future solid waste is environmentally sound. The Contractor shall accelerate the final disposition of legacy low-level and transuranic waste in accordance with PEMP, Part II-B.

The Contractor shall plan and integrate recycling, treatment, storage and disposal activities; provide technical support and verification of compliance with waste acceptance criteria; and provide technical support for waste minimization/pollution prevention initiatives. The solid waste program shall be accomplished in accordance with the Federal Facilities Compliance



Agreement for Land Disposal Restricted Waste and the associated "Bridging Amendment" and the Federal Facilities Compliance Act of 1992 for mixed waste.

f. Site Support

(1) Environment, Safety, and Health (ES&H) Support and Assurance Services

The Contractor shall include provisions for the protection of human health and safety and the environment in all activities for which it has contractual responsibilities. The Contractor shall implement and continuously improve the existing ES&H management plan and shall conduct its activities in full compliance with DOE ES&H requirements. The Contractor shall include, as a minimum, the following disciplines as part of the ES&H support and assurance services:

- Occupational, industrial and construction safety;
- Industrial hygiene;
- Occupational medicine;
- Fire protection;
- Nuclear safety (including criticality safety);
- Transportation safety;
- Radiation protection;
- Emergency operations (fire, rescue, emergency medical, hazardous material response) and Emergency preparedness (including coordination with outside agencies);
- Hazardous material management;
- Environmental management and protection (including National Environmental Policy Act, Resource Conservation Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Safe Drinking Water and Clean Air Act, and Clean Water Act compliance);
- Pollution prevention and waste minimization;

- Lessons learned/root cause analysis management;
- Technical training;
- Operations control (conduct of operations); and
- Radiological assistance to support emergency response in the Southeast.

The Contractor shall implement an ES&H program that not only covers the Contractor's organizations but also other organizations performing work for the Contractor via subcontracts and other agreements at SRS. The Contractor shall work with other Site organizations to ensure consistent ES&H programs are implemented at SRS to realize efficiencies and cost savings for the overall Site. The Contractor shall provide support for any activity on site, as needed, in emergency situations. The Contractor shall also provide ES&H support to others when directed by DOE; this may include activities such as onsite and offsite environmental analysis and assisting in the preparation of required regulatory information.

The Contractor shall implement and maintain a set of requirements to ensure the protection of human health and safety and the environment. In the event, the Contractor becomes out of compliance, appropriate action to protect human health and safety and the environment shall be taken until compliance is reestablished. When activities are not in compliance with appropriate requirements, the Contractor shall accept violation notices.

The Contractor shall work effectively with other site contractors, subcontractors, external regulators, and others (such as the Defense Nuclear Facilities Safety Board, South Carolina Department of Health and Environmental Control, etc.) to maintain and improve ES&H performance at SRS. The Contractor must ensure ES&H excellence in subcontractor performance and flowdown of all applicable requirements to subcontractors. The Contractor shall consider ES&H performance as an evaluation factor in the selection of subcontractors performing work in Government-owned or leased facilities.

The Contractor shall periodically evaluate the ES&H program for effectiveness by using both self and independent assessments, monitor ES&H performance continuously by the use of ES&H performance indicators, and affect continued ES&H improvement in a cost effective manner.

(2) Engineering and Construction

The Contractor shall be the design and construction manager for the SRS. A minimal in-house capability may be maintained to provide limited design and construction services associated with maintenance and repair. The Contractor shall utilize fixed price contracting for design and construction services to the maximum extent practicable. DOE reserves the right to assign management responsibility on certain individual projects to organizations other than the Contractor.

(a) Engineering Services and Program Management. The Contractor shall provide or procure engineering services to implement programs as follows:

- systems engineering;
- configuration management;
- suspect parts program;
- geotechnical services; and
- development and maintenance of safety documentation.

(b) Design and Construction Management Services. The Contractor shall:

- plan and integrate all activities related to engineering, design, procurement, and construction services;
- ensure all customer/engineering/construction interfaces and requirements of all functions including research and development, operations, maintenance, environmental protection, design review, staffing, training, operational readiness and startup are properly reflected in designs;
- provide a proven, systematic project management system which provides cost estimating, scheduling, and change control systems for maintenance of an appropriate baseline;

- provide or procure architect-engineering services as required to support the design of facilities (except that services for maintenance and repair may be provided by the Contractor);
- provide or procure construction services as required to meet project requirements (except that services for maintenance and repair may be provided by the Contractor);
- provide other services, such as: schedule coordination to avoid conflict with other projects; construction site orientation; safety program monitoring; utility service coordination; security badging; quality assurance and inspection; determination of progress payments for work accomplished; change management; and management of construction goods and services;
- include cost, technical, and schedule performance measures in subcontracts.

(3) Operations Support

The Contractor shall provide necessary support functions for its activities. These shall be services and support required to achieve the missions of the Site. The Contractor shall provide services for others, to the extent authorized by SR, including, but not limited to, those listed below:

- Maintenance and repair;
- Operation of utility systems including water, sewage, electrical and steam distribution;
- In accordance with DEAR 947.104-3(d)(1), transportation, traffic management, receiving and distribution;
- Nuclear materials safeguards and accountability;
- Technical and analytical laboratory operations; and
- Security classification.

(4) Site Services

The Contractor shall provide planning and administrative services for all its activities. The Contractor shall provide overall landlord and custodial services for real and personal property for SRS, including facilities occupied by DOE-SR, other contractors onsite, and tenant organizations operating under contract or agreement with or the permission of the SR Contracting Officer as identified in paragraph 6 below. Site services include, but are not limited to:

- Strategic planning, program planning, and long and short range planning;
- Facility and Site use planning;
- Program integration planning involving other DOE organizations and Contractors;
- Procurement;
- Accounting, budgeting and financial management;
- Personnel administration and labor relations;
- Information resources management, development, and operation;
- Property management;
- Legal;
- Administrative services; and
- Public Affairs.

The type and extent of site support to be provided organizations not under the control of the Contractor shall be governed by a Memoranda of Agreement or general policy guidelines issued by the Contracting Officer.

#### **C.4 WORK FOR OTHERS**

The Contractor shall perform work (e.g. providing technology and materials) as directed by the Contracting Officer. The work may be performed at the SRS, other DOE sites, or at other locations that may have DOE work. This may involve:

- Work, which is related to the SRS mission, for other Federal agencies under interagency agreements entered into by those agencies and DOE under the Economy Act or other legal

authority;

- Work in support of other DOE programs at the Site, or elsewhere, when the work involved has been determined by DOE to be within the engineering and technical capabilities of the Contractor and related to the scope of this contract; and
- Work to be performed under DOE's Work For Others Program where DOE has determined that the work is related to the mission of the Contract, or are within the special engineering and technical capabilities of the Contractor.

Non-DOE funded work performed by the Contractor shall be approved in advance in writing by the Contracting Officer and shall be performed consistent with the terms of this contract and other applicable DOE policies and procedures.

### **C.5 COMMUNITY OUTREACH**

Consistent with site mission requirements, the Contractor may assist the local communities: in their economic diversification development activities through: technology transfer; support of community activities; reuse of Site facilities and equipment as appropriate; and, in other appropriate means based upon availability of resources and in conformance with Departmental policies. The contractor shall fully support the local community reuse organization and support community improvement in math, science and education programs, and such other programs as the Department may from time-to-time direct.

### **C.6 INTERFACES WITH OTHER SITE USERS**

The Contractor shall interface with other organizations which conduct activities at SRS but with whom it does not have contractual business agreements. The major organizations currently at SRS include: the Wackenhut Services Incorporated, which provides physical security services including the guard force, law enforcement, and special response; the U.S. Forest Service, which is responsible for forest management; the University of Georgia, which is responsible for managing the Savannah River Ecology Laboratory; and the Three Rivers Waste Management Center, which is a Technology Development Center and landfill site for the disposal of sanitary/solid waste serving SRS and the nine South Carolina counties who currently comprise the Three Rivers Solid Waste Authority. The Contractor shall comply with existing documented understandings or agreements with other Site users, and as appropriate, work with these organizations to modify the agreements and understandings as necessary to permit effective performance of all DOE requirements at the SRS.

**Part I - The Schedule**

**Section D**

**PACKAGING AND MARKING**

**D.1 RESERVED**

**Part I - The Schedule**

**Section E**

**INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION OF SERVICES--COST-REIMBURSEMENT (FAR 52.246-5)  
(APR 1984)**

- (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during Contract performance and for as long afterwards as the Contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the Contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with Contract requirements, the Government may require the Contractor to perform the services again in conformity with Contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce any fee payable under the Contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Contract requirements, the Government may (1) by Contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the Contract for default.

**E.2 ACCEPTANCE**

Acceptance for all work and effort under this Contract shall be accomplished by the Contracting Officer or any other duly authorized representative.



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**Part I - The Schedule**

**Section F**

**DELIVERIES OR PERFORMANCE**

**F.1 TERM OF CONTRACT**

The term of this Contract shall be for the period of October 1, 1996 through September 30, 2006, unless sooner terminated in accordance with the provisions of this Contract.

**F.2 PRINCIPAL PLACE OF PERFORMANCE**

The work under this Contract is to be carried out at a variety of locations, with the principal place of performance being the Savannah River Site near Aiken, South Carolina.

**F.3 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989) (ALTERNATE I) (APR 1984)**

- (a) The Contracting Officer 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 for 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 Contracting Officer shall either--
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Termination Clause of the 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 Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if--

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- (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 its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted 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 the convenience of the Government, the Contracting Officer 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 Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**Part I - The Schedule**

**Section G**

**CONTRACT ADMINISTRATION DATA**

**G.1 TECHNICAL AND ADMINISTRATIVE CORRESPONDENCE/MATTERS**

To promote timely and effective administration under this Contract, the Contractor shall be subject to the following procedures:

- (a) Technical and Administrative Correspondence/Matters. Technical and administrative correspondence concerning performance of this Contract shall be addressed to the responsible officials designated in SR Manual 200.1.1A, Chapter 1, SR Functions, Responsibilities and Authorities Procedure, using the latest published edition.
- (b) Contractual Correspondence/Matters. Correspondence involving contractual matters will be addressed to the Contracting Officer. The primary Contracting Officer responsible for administration of this contract is T. E. Reynolds, Contracts Management Division. This individual shall be primarily responsible for all contractual actions required to be taken by the Government under the terms of this contract.

Notwithstanding the above, in the event the above named individual is absent for an extended period or an urgent action is required, any other duly appointed Contracting Officer assigned to the Savannah River Operations Office shall be authorized to take the required contractual action(s) within the limits of his/her authority.

- (c) DOE Contracting Office. The Contracting Officer's address is:

Contracts Management Division  
U.S. Department of Energy  
Savannah River Operations Office  
P.O. Box A  
Aiken, SC 29802

- (d) All correspondence sent to the Contracting Officer shall contain a subject line commencing with the contract number as illustrated below:

SUBJECT: CONTRACT NO. DE-AC09-96SR18500

A copy of all correspondence addressed to the Contracting Officer shall be provided to the Manager, Savannah River Operations Office at the address stated in paragraph (c) above.

## **G.2 DOE PATENT COUNSEL**

Correspondence being sent to the DOE Patent Counsel should be addressed to:

U.S. Department of Energy  
Savannah River Operations Office  
ATTN: Patent Counsel  
P.O. Box A  
Aiken, SC 29802

## **G.3 DOE PROPERTY MANAGER**

The DOE Property Manager identified for this contract is provided below. The Contractor may use the Property Manager as a point of contact for guidance and assistance involving property requirements. The Contracting Officer shall be contacted for any matter which involves a change in any of the expressed terms and conditions of the contract.

U.S. Department of Energy  
Savannah River Operations Office  
ATTN: Larry Snyder  
Site Services Division  
P.O. Box A  
Aiken, SC 29802  
Telephone Number: (803) 725-3054

**Part I - The Schedule**

**Section H**

**SPECIAL CONTRACT REQUIREMENTS**

**H.1 ACCOUNTING FOR PERFORMING ENTITY**

All financial data and planning of the entities identified in the Special Contract clause entitled, Recognition of Performing Entity shall be provided for at the same level of detail required of the prime Contractor. All actual financial data shall be included with the prime Contractor's input to the Financial Information System by the dates established by DOE. Actual manpower data will also be reported in a form and manner acceptable to DOE.

**H.2 ADVANCE UNDERSTANDING ON HUMAN RESOURCES**

(a) Advance Understanding on Human Resources

DOE Order 350.1, "Human Resources Management Program," shall serve as the governing document for the advance understanding. The advance understanding appended to this Contract as Section J, Appendix A, shall as a minimum implement the requirements of this Order.

It is the Department's intent to ensure that the Contractor Human Resource Policies adequately support the Contractor's ability to attract and retain critically skilled employees. Moreover, it is the Contractor's responsibility to notify DOE when any obstacles are encountered that could impact the recruitment and retention of critically skilled employees.

(b) Labor Relations

The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities. The Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.

**H.3 RESERVED**

#### **H.4 APPLICATION OF SERVICE CONTRACT ACT TO THE PERFORMING ENTITY**

The Service Contract Act of 1965 (P. L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is however, fully applicable to subcontracts awarded by contractors operating DOE facilities.

#### **H.5 APPROVAL OF EXPENDITURES**

Whenever approval or other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this Contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

#### **H.6 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS**

On October 1, 1996, the Contractor assumed responsibility for existing contracts and other agreements from Contract No. DE-AC09-89SR18035. These included: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permits, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans) and (g) any other agreements in effect prior to execution of this Contract.

#### **H.7 CONFIDENTIALITY OF INFORMATION**

- (a) To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
  - (1) Information which, at the time of receipt by the Contractor, is in public domain;
  - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
  - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

- (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.
- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- (e) This clause shall flow down to all appropriate subcontracts.
- (f) Technical data is addressed in Section I, DEAR 970.5227-2.

**H.8 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION/FINES AND PENALTIES**

- (a) The Contractor shall accept, in its own name, notices of violations (NOV's) and fines and penalties if issued directly to the Contractor by Federal or State regulators resulting from the Contractor's performance or work under this contract. The allowability of the costs associated with fines and penalties shall be governed by the provisions of the Section I Contract Clause entitled, Payments and Advances. If a NOV or a fine/penalty is provided to the Contractor and the Contractor is not responsible for the cited function under this contract, the Contractor shall immediately notify the Government and the regulator. Any NOV's, fines or penalties associated with any act or failure to act before the Contractor assumed responsibility for the site on October 1, 1996, shall be processed in accordance with the Contract Clause entitled, Preexisting Conditions.
- (b) The Contractor shall be free to conduct negotiations with regulators regarding NOV's, fines and penalties issued directly to the Contractor; however, the Contractor shall not make any commitments or offers to regulators which would bind the Government in any



form or fashion, including monetary obligations, without receiving written concurrence from the Contracting Officer or his authorized representative (who shall be the SR Chief Counsel regarding fines and penalties) prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

- (c) At the Government's discretion, NOV's issued to the Government shall be referred to the Contractor for processing in accordance with paragraph b above.
- (d) The amount of any fine or penalty levied against and paid for by the Government which results from the Contractor's operations may be offset from any monies due for payment under this contract or any other Government contract in accordance with the Contract Disputes Act (CDA). Such an offset will not be made if the actions which gave rise to the fine or penalty were a result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer; or if a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care by the Government or the Contractor.

#### **H.9 CONTRACTOR EMPLOYEES/NON-CONTRACT ACTIVITIES**

- (a) In carrying out the work under this Contract, the Contractor shall be responsible for the employment of all professional, technical, skilled, and unskilled personnel engaged by the Contractor in the work hereunder, and for the training of personnel. Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.
- (b) The Contractor's employees engaged in the performance of this Contract may remain on the payroll at the Savannah River Site and be used to perform incidental work by the Contractor unrelated to the scope of work of this Contract, provided that: these activities do not interfere with work under this Contract; no costs, expense or liabilities, resulting from the performance of such activities shall be allowable costs under the Contract; and the Contractor shall indemnify and hold harmless DOE against any such liabilities, claims or expenses resulting from such activities. Further, the Contractor shall make advance payment for such activities to the Special Financial Institution Account Agreement For Use With The Payments Cleared Financing Agreement referred to in Appendix B hereof, in manner and amount consistent with applicable DOE financial policies and procedures, as amended, and as determined by the Contracting Officer. Payments so made shall become part of the advances of Government funds as

described in the clause entitled "Payments and Advances." The Contractor shall submit to the Contracting Officer a monthly written report on all employees who have been assigned to other than contract work. If the Contracting Officer determines that excessive use of personnel for such purposes has impacted overall contract performance, in addition to other actions or remedies available under the contract, the Contracting Officer may require the Contractor to obtain advance written approval for any such future use of any of the Key Personnel identified in Section J, Appendix D.

- (c) The parties recognize that the performance of activities described in paragraph (b) above may result in the generation of records. The parties agree that any records (excluding, records required to determine costs, expenses, or liabilities related to the activities in (b) above), being paid for out of corporate and not Contract funds are owned by the Contractor and DOE shall have no right to inspect, copy, or audit such records as set forth in the Contract Clause entitled, "Access To And Ownership Of Records."
- (d) Upon prior written approval of the Contracting Officer, the Contractor may use corporate employees, not employed under the Contract, for incidental work under the Contract in accordance with the Special Contract Clause H.12 Corporate Home Office Expenses. Salary reimbursement for the time such employees work under this Contract will be determined in accordance with the employee's regular work location's government-approved costing practices. Time worked under this Contract for such corporate employees will include the time spent by the employees en route to and returning from the work site on the first and last day of such work. Travel costs of such corporate personnel will be allowed in accordance with the travel policies that are contained elsewhere in this Contract.

#### **H.10 CONTRACTOR'S MANAGERIAL PERSONNEL**

For the purpose of identifying the Managerial Personnel defined in the Contract Clause entitled "Property," and the references to Managerial Personnel in the Contract Clauses entitled "Insurance-Litigation and Claims," the Contractor's Managerial Personnel are:

President  
Regulatory Integration Manager  
Chief Closure Officer  
F-Area Closure Projects Manager  
H-Area Closure Projects Manager  
Waste Solidification Projects Manager  
Liquid Waste Disp. Projects Manager  
DP Manager  
NN Program Manager

DP Area Operations Manager  
Chief Operations. Officer  
NMM Manager  
SW & Infrastructure Manager  
Field Support Services Director  
Technical & Quality Services Manager  
Laboratories Manager  
Spent Fuel Manager  
ES&H Services Manager  
Savannah River Technology Center (SRTC) Director  
SRTC Deputy Director  
Project Design & Construction Services Director  
Design Services Manager  
Project Management Services Manager  
Construction & Start-up Services Manager  
Project. Manager for any Construction, Alteration or Repair > \$100M  
Soil & Groundwater. Closure Project Manager  
Safeguards and Security and Emergency  
Services (SS&ES) Manager  
Facility Disposition Project Manager  
Chief Financial Officer  
General Counsel

NOTE: Notwithstanding any re-engineering or reorganization of the Contractor during the term of this contract which affects the titles or responsibilities of the above named positions, the individual assuming responsibility for the duties of the above named positions shall automatically become part of the Contractor's "managerial personnel" as that term is utilized within the context of this contract.

A separate listing of the personnel identified as Key Personnel is set forth in Attachment D.

## **H.11 CONTRACTUAL UNDERSTANDINGS**

- (a) In regards to the Plan required under the clause in Section I entitled, Overtime Management, if the Contracting Officer places any restrictions on the Contractor's staffing levels, and such restrictions impede the Contractor's ability to execute the site work, the parties agree to negotiate a change to the Plan if additional overtime is required to satisfactorily execute the scope of work. The Work Authorization/Execution Plan (WA/EP) shall establish the overtime premium fund contemplated by the clause. The remaining requirements of the plan are addressed in the Contractor's 5B Manual and via reports separately submitted to the DOE-SR CFO.
- (b) In regards to the records covered by the clause in Section I entitled ACCESS TO

AND OWNERSHIP OF RECORDS, paragraph (b)(2), it is understood that the Government shall have the right to inspect, copy or audit records for which the Contractor was reimbursed under this contract. The Government shall not have any rights to inspect, copy or audit commercial records of the company not associated with this contract, nor other similar records for which the contractor was not reimbursed under this contract by the Government. It is further understood that the Contractor shall make and provide copies of all documents, including those described in paragraph (b) (1) through (5) as requested by the Government. Additionally, copies of those documents described at paragraph (b)(4) that relate to litigation for which the Contractor is reimbursed under this contract shall be promptly provided to DOE Office of Chief Counsel.

- (c) In regards to the Clause in Section I entitled, Technology Transfer Mission, the term “Laboratory” as used in this contract means the Savannah River Site and its facilities.
- (d) In regards to Section E.1 paragraph (b), it is understood the existing quality assurance and internal audit programs satisfy the inspection system and inspection records requirements of this clause.
- (e) RESERVED
- (f) In regards to the Clause in Section I entitled TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT, paragraph (d)(3), the Government’s right to make unilateral changes to the Performance Evaluation and Measurement Plan does not apply to the items specifically identified in the Table of Contents in the PEMP issued with this modification.
- (g) RESERVED
- (h) The Performance Evaluation and Measurement Plan Parts I and II are incorporated by reference into Section J of the contract. (The Introduction and Part III are not included in the contract and are included for information only.).
- (i) The Contractor agrees to work in good faith and assist DOE-SR in meeting its Small, Small Disadvantaged and Woman Owned business goals and other Departmental goals.
- (j) In regards to Clause H.9(b) Contract Employees/Non-Contract Activities, it is understood and agreed that the Contractor will continue to maintain in suspense and not collect a portion of its earned fee to which it is otherwise entitled, to satisfy the “advance payment” requirements of this clause.

- (k) Subject to the provisions of DOE Order 350.1, the cost principles in Federal Acquisition Regulation Part 31.2 and Department of Energy Acquisition Regulation Part 931.2, laws and regulations, the contractor may submit for DOE approval:
- (1) A Contractor Workforce Incentive plan for completion of mission requirements under the contract. The Plan may provide for employee incentives as well as executive incentive compensation;
  - (2) A multi-year Workforce Compensation plan; and
  - (3) A multi-year Workforce Restructuring Plan providing for “ebb and flow” of personnel covering the balance of the term of the contract. For purposes of this modification, the term “ebb and flow” means the restructuring of the workforce on a continual basis to ensure the right skill mix exists at the site to accomplish the work, and does not connote numbers of employees. The Plan shall include the contractor’s approach to smoothly transitioning the workforce over the balance of the contract term so as to minimize involuntary impacts to full-time contractor personnel while achieving staffing levels matching projected site needs subsequent to fiscal year 2006.

DOE shall review the Plans in a timely manner and approve as reimbursable costs under the contract such aspects of the Plans it deems reasonable, allowable, allocable and compliant with laws and regulations.

- (l) It is the understanding of the parties that the contractor’s commitment to performance of the Environmental Management closure incentive as required by Part II-B of the PEMP is predicated upon funding being obligated to the contract in the annual amounts identified in the Performance Evaluation and Measurement Plan. Consistent with the Changes clause, a failure of the Government to provide the stated levels of funding will entitle the contractor to an equitable adjustment to the contract. The funding amount stated in the PEMP specifically excludes costs for facility safeguards and security in FY2003 – FY2006. Actual funds to be obligated to the contract shall be subject to the availability of funds.

It is further understood that funding for Defense Program activities and Defense Nuclear Nonproliferation activities (including the HEU Blend Down project) will be separately provided by the National Nuclear Security Administration (NNSA). Applicable PBIs will be developed by the NNSA.

- (m) For purposes of the contract clause in Section I entitled, Conditional Payment of Fee, the evaluation periods contemplated shall be six month periods commencing on October 1, 2000. The amount of fee subject to reduction under the Conditional Payment of Fee

clause shall be the total fee earned plus any provisional fee payments earned during the six month evaluation period.

- (n) RESERVED
- (o) In regards to the EM Closure incentive under this contract, the term “equitable adjustment” as used throughout this contract may result in a change in the fee, the work requirements or the schedule for the work requirements within the contract term as defined in Section F.
- (p) In recognition of the complexity and significance of the EM Clean-Up Incentive identified in PEMP Part II-B, it is in the best interests of the Government for the contractor to maximize completion of work identified in Part II-B.

(1) As of November 30, 2005, the Government will complete an assessment of the progress on the EM Clean-Up Incentive project. If in the Government’s assessment the project is determined to be successful (approximately a Schedule Performance Index of 0.90 or above), or is projected to be successful by the scheduled completion dates set forth in the PEMP, and/or if the Government otherwise determines it to be in the Government’s best interests, it would be the intent of the Government to exercise the provisions of Contract Clause I.50 Continuity of Services and to authorize completion of the incentive work during the contract transition period. Under such a determination the Contracting Officer will direct the contractor to commence a 90 day contract transition to the successor contractor commencing October 1, 2006. By September 1, 2006, the contractor shall submit a transition plan to the Contracting Officer for approval providing for completion of the EM Clean-Up Incentive by November 30, 2006, and providing phase-in, phase out services needed to transition the remaining work to the successor contractor to be completed no later than December 31, 2006. The fee for this work, including all transition services, will be the fee established in the EM Clean-Up Incentive for the work completed under the Incentive by November 30, 2006. No separate fee for transition services will be paid.

2. If the Government does not determine the EM Clean-Up Incentive project to be successful as described above, the Contracting Officer will then authorize the contractor to commence a contract transition pursuant to the Section I clause entitled, Continuity of Services, commencing on October 1, 2006, or such other date as may be agreeable by the parties. The parties contemplate the estimated cost for the transition period will be approximately \$200,000,000 for which the contractor shall receive a separate fixed-fee of \$5,000,000 for the transition services, subject to the terms and conditions of this contract. Should the estimated costs for transition services be plus or minus 10% from the \$200,000,000 estimate, the fixed fee amount fee will be equitably adjusted. The contractor’s final fee for the EM Clean-Up Incentive will be determined

based on the progress made under the Incentive by September 30, 2006, under the terms provided for in the Incentive. The Government may under this provision, for final fee payment purposes, recognize partial completion of work where the percentage of work complete can be quantitatively calculated. The final fee payment under the EM Clean-Up incentive will be determined as earned, and then paid after inspection and acceptance has occurred, which will occur in FY2007.

## H.12 CORPORATE HOME OFFICE EXPENSES

- (a) For Contractor affiliated sources, the Contractor may obtain direct support from its affiliates and those of the performing entity to meet technical and staffing requirements on an as-needed basis as approved by the Contracting Officer. Contracting Officer approval shall be obtained with DOE's approval of the Contractor's fiscal year Work Authorization/Execution Plan (WA/EP) or the EM Closure Incentive Contract Performance Baseline which will show the anticipated level of affiliate support and document the anticipated level of expertise required from the affiliate. Prior to ordering any support from an affiliate, the Contractor shall either document the "special expertise" required from the affiliate or document support from the affiliate is being obtained on a "least cost basis" than from other available sources. Any support required beyond the level of support approved in the WA/EP or EM Closure Incentive Contract Performance Baseline shall be processed via formal change control procedures. The process and procedure for utilizing support from affiliates shall be approved by the Contracting Officer.
- (b) As used above, the term "special expertise" may include the use of affiliated personnel resources that possess unique skills, are immediately available to the contractor and are needed to resolve emergencies or critical performance issues, or have superior knowledge or familiarity with corporate practices/site programs, or will be utilized to directly supervise corporate site workers. Usage of such personnel on a superior knowledge basis must provide for the "least cost" for the services by the avoidance of costs for familiarization with corporate or site programs, or avoiding duplication of costs.
- (c) Services from an approved Contractor affiliate will be at cost without additional fee or profit. Allowable cost will include direct costs and all allowable affiliate indirect cost in accordance with applicable DCAA cost principles and cost accounting standards. Temporary assignments of Contractor affiliate personnel to the Savannah River Site or other sites identified in this contract shall bear indirect costs based upon DCAA recommended/approved offsite rate(s) that exclude home office facilities related costs. However, in the event a DCAA recommended/approved offsite rate(s) does not exist for a specific Contractor affiliate, the Contractor affiliate shall not be required to develop an offsite rate unless the temporary assignment exceeds 6 months.
- (d) Contractor's affiliates providing such services and personnel shall perform the work in accordance with applicable terms and conditions of this contract.



### **H.13 DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

The Contractor shall conduct activities in accordance with those DOE commitments to the Defense Nuclear Facilities Safety Board (DNFSB) which are contained in implementation plans and other DOE correspondence to the DNFSB. The Contractor shall support preparation of DOE responses to DNFSB issues and recommendations which affect or can affect Contract work. Based on the Contracting Officer's direction, the Contractor shall fully cooperate with the DNFSB and provide access to such work areas, personnel, and information as necessary. The Contractor shall maintain a document process consistent with the DOE manual on interface with the DNFSB. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

### **H.14 DISCRIMINATION IN EMPLOYMENT**

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder. Additionally, the Contractor shall comply with all other laws such as, but not limited to, Title VII, 42 U.S.C. Section 2000e, et.seq.

### **H.15 ENVIRONMENT, SAFETY, AND HEALTH**

The Contract Clause entitled "Integration of Environment, Safety and Health Into Work Planning and Execution" requires the Contractor to develop and implement a Safety Management System. As part of this requirement, the Contractor shall submit to the Contracting Officer, or designee, a document entitled Integrated Safety Management System Description Document that addresses how the Contractor will meet the requirements of this clause. The Contractor will notify the Contracting Officer, or designee, in writing, of any written direction or instruction which contradicts, limits, or compromises those environment, safety, and health requirements. Having already submitted a Description Document for FY2001, the Contractor shall submit an update to the Integrated Safety Management System Description Document each year on September 1 for the following fiscal year. Any changes to the Integrated Safety Management System Description Document after the Contracting Officer's, or designee's, initial approval shall be approved by the Contracting Officer, or designee.

This Contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for Category 2 nuclear facilities and other facilities as directed by the Contracting Officer to ensure adequate protection of the workers, the public, and the environment. Updates and changes to any approved Authorization Agreements(s) shall be subject to Contracting Officer approval.

## **H.16 ENVIRONMENTAL JUSTICE**

The Contractor shall embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on nondiscrimination in its programs that affect human health and the environment. The Contractor shall comply with the principles of the Executive Order 12898 on Environmental Justice.

## **H.17 ENVIRONMENTAL PERMITS AND APPLICATIONS**

In recognition of the Contractor's responsibility to operate in compliance with all applicable environmental requirements, the Contractor shall sign Resource Conservation and Recovery Act (RCRA) permits and applications as Co-operator. DOE shall sign RCRA permits and applications as co-operator and owner if such signature is required by law or Regulatory Agency. The Contractor shall sign all other permits and applications as required by law or Regulatory Agency. To clarify the resulting obligations under the Contract, the parties agree to the following:

- (a) DOE agrees that the Contractor shall not incur any liability above and beyond that contemplated by the Contract by reason of the Contractor's execution of environmental permits.
- (b) DOE agrees that if bonds, insurance, or administrative fees are required as a condition for such permits, such costs shall be allowable. In the event that such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. In no event shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.
- (c) In the event of termination or expiration of this Contract, DOE will require the new Contractor to accept transfer of all environmental permits executed by the Contractor.

## **H.18 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT**

Upon the effective date of this contract, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC09-89SR18035.

## **H.19 INTEGRATED COST REDUCTION PROPOSALS**

The M&O Contractors managing the Laboratories, Production Plants, and the Test Site within the Nuclear Weapons Complex (NWC) may assess their operations in an integrated approach and jointly identify areas where efficiencies would bring cost reductions to the overall NWC without adversely affecting the level of performance required by the individual contracts. Accordingly, NWC Contractors may jointly develop integrated cost reduction proposals (ICRPs) for hard dollar cost savings. ICRPs are encouraged on a multi-site basis to leverage higher potential savings than could occur on a site basis and is expected to encourage sites that have developed practices and processes to share with other NWC Contractors to provide net costs savings across the complex.

These ICRPs are developed and submitted to a DOE Review Board for review and approval. The ICRPs will follow the process and requirements described in the Contract Clause entitled “Cost Reduction” with the exception of the review and approval process described above. The ICRPs are to recommend a Contractor cost-sharing arrangement of the net savings that in total shall not exceed 25 percent of the net savings discussed in the Cost Reduction Clause of this Contract. The ICRPs are to recommend work to be performed at each participating Contractor that would utilize the government’s share of the net savings at that site. The integrated nature of these ICRPs demonstrate a significant departure from business as usual by striving for cost effectiveness across multiple sites. They would be considered above and beyond routine business practices for individual sites and as such would be given additional consideration during review by DOE for approval.

## **H.20 INTERACTIONS WITH THE PLUTONIUM DISPOSITION FACILITY CONTRACTORS AND SAVANNAH RIVER SITE CONTRACTOR**

- (a) DOE and the Plutonium Disposition Facility (PDF) Contractors have specific responsibilities and defined interactions with the Savannah River Site (SRS) Contractor. DOE will use a partnering approach to manage interactions between DOE, the SRS Contractor, the PDF Contractors, and other Savannah River Site contractors. This approach will: encourage a common vision with supporting goals and missions for each participant; promote the principles of teamwork, mutual respect, openness, honesty, trust, professionalism, and understanding; and include joint commitments to:
- (1) Maintain high safety performance;
  - (2) Complete the plutonium disposition mission on schedule and within cost;
  - (3) Eliminate barriers to an efficient and more cost-effective program;
  - (4) Promote innovation;
  - (5) Improve communication and understanding;

- (6) Provide early identification and recovery from performance problems;
- (7) Resolve conflicts through a coordinated work effort that avoids adversarial relationships; and
- (8) Reinforce the partnered relationship through honest feedback and continual improvement.

The SRS Contractor shall provide resources necessary to establish and implement the partnering agreement throughout the Contract period of performance. The SRS Contractor shall be responsible for actively participating in the partnering approach in a constructive manner.

- (b) DOE is responsible as the “Owner” and “Regulator” of the plutonium disposition facilities.
  - (1) As the Owner, DOE will:
    - (i) Establish requirements, administer the Contract and confirm that the SRS Contractor meets Contract requirements;
    - (ii) Integrate the plutonium disposition mission into the overall Savannah River Site mission;
    - (iii) Provide support and approve changes as specified in the Project Execution Plan;
    - (iv) Perform design, construction and operability oversight of the Plutonium Disposition Facilities and, where required, engage other contractors to provide design and construction support, as appropriate;
    - (v) Inspect and accept the design of the Plutonium Disposition Facilities (excluding the MOX Fuel Fabrication Facility);
    - (vi) Manage project progression through the critical decision process
    - (vii) Provide Quality Assurance (QA) oversight; and
    - (viii) Require compatibility of reporting and management systems.
  - (2) As the Regulator, DOE will regulate radiological, nuclear, and process safety, and non-radiological worker safety and health (excluding the MOX Fuel Fabrication Facility).
- (c) The SRS Contractor shall provide site services to DOE, PDF Contractors and other Savannah River Site contractors as directed by DOE.
- (d) The SRS Contractor shall:
  - (1) Perform the requirements of this Contract, integrating activities with DOE, the PDF Contractors, and other Savannah River Site contractors, as needed.

- (2) In cooperation with DOE (as lead), PDF Contractors, and the other Savannah River Site contractors, establish an interface management process to assure effective control of technical, administrative, and regulatory interfaces.
- (3) Commission and operate the Plutonium Disposition Facilities as appropriate (excluding the MOX Fuel Fabrication Facility).

## **H. 21 LITIGATION MANAGEMENT PROCEDURES**

- (a) The Contractor (including any entities named in paragraph a. of Special Contract Clause Recognition of Performing Entity) shall prepare a Management of Litigation Procedures which shall be submitted to the Contracting Officer or designee for approval within 60 days after the effective date of the contract, and shall be updated thereafter as required.
- (b) The SR Chief Counsel is the authorized designee of the Contracting Officer for approval of this Plan.
- (c) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE approved contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

## **H.22 LOBBYING RESTRICTIONS**

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in applicable statute and regulation.

## **H.23 MODIFICATION AUTHORITY**

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

- (a) Accept nonconforming work;
- (b) Waive any requirement of this contract; or
- (c) Modify any term or condition of this Contract.

**H.24 MULTI-YEAR FEE AND ANNUAL FEE NEGOTIATIONS (Modified in Modification No. M100)**

- (a) The NNSA incentives employ the use of Performance Based Incentives (PBIs). Traditionally, PBIs were limited to work that could be completed in the current fiscal year and fee was assigned to the PBIs from an annual fee pool. This is inefficient for important work that cannot be defined or completed in one year. Under this contract, multi-year PBIs will be employed. Multi-year PBIs shall be used for major work efforts/projects that are expected to span several years. There will also be annual PBIs. Annual PBIs shall be used when the work is to be completed in the current fiscal year or is of a repetitive nature with the specific requirements established annually.
- (b) The annual fee negotiations contemplated by the Clause in Section I entitled TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT are to be construed to mean reviewing the existing multi-year Performance Based Incentives/Special Performance Areas (PBIs/SPAs) for NNSA work to ensure the conditions under which they were negotiated remain valid, the work required is consistent with mission requirements, and negotiating changes as appropriate, as well as when appropriate assigning fee from the unallocated fee pool to new PBIs/SPAs. The EM clean-up incentive fee set forth in Part II-B of the PEMP is a multi-year negotiated fee which is not subject to annual negotiations.
- (c) A group of annual and multi-year PBIs were initially agreed to between the parties. With the issuance of Modification No. M100 to the contract, the initial \$345 million total fee pool was replaced with an EM incentive with its own fee structure and a set of NNSA PBIs with assigned fees. As of the issuance of Modification No. M100, the then remaining fee in the unallocated fee pool, \$5,084,571, was established for use by NNSA to incentivize any other work it determines appropriate. The “unallocated” pool of fee will be maintained to account for fee which had not been assigned to PBIs or SPAs. It is the intent of the parties that the balance of the unallocated fee pool will be allocated and made available for earning by the Contractor during the balance of the contract term through assignment of fee to PBIs or Special Performance Areas. Fee which is unearned by the contractor as a result of cancellation or modification of a PBI or SPA will be either allocated to another PBI/SPA or placed in the unearned fee pool for future allocation. As part of the annual fee negotiations, the parties agree to in good faith allocate the unallocated fee to meaningful work efforts during the term of the contract. Fee from the PBIs/SPAs which is unearned due to nonconformance with contract requirements shall not be returned to the unallocated fee pool but shall be forfeited.
- (d) The balance of the NNSA multi-year fee pool may be adjusted as part of the annual fee negotiations if there is a significant change in the scope or complexity of the work

requirements or the budget varies by more than plus or minus 10% from the NNSA budget for FY2001 as a result of the addition or deletion of new work.

- (e) The EM clean-up incentive incorporated by this modification establishes a multi-year fee incentive which incorporates the non-NNSA unpaid balance of the multi-year fee pool.

## **H.25 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS**

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

## **H.26 NUCLEAR FACILITY OPERATIONS**

- (a) The activities under this Contract include the operation of nuclear facilities. The Contractor recognizes that such operations involve the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the Contractor shall exercise a degree of care commensurate with the risk involved.
- (b) As used in this clause, the term "Nuclear Materials" is a collective term which includes source material, Special Nuclear Material, and those other materials to which, by direction of DOE, the provisions of DOE's Orders or Directives regarding the control of Nuclear Materials, which have been or may be furnished to the Contractor by DOE, apply. The Contractor shall accept existing procedures and, in a manner satisfactory to the Contracting Officer, propose revised, as appropriate, accounting and measurement procedures, maintain current records and institute appropriate control measures for Nuclear Materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permits such inspections as DOE may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.
- (c) Transfers of Nuclear Materials shall only be made with the prior written approval of the Contracting Officer, or authorized designee. Nuclear Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such Nuclear Materials in accordance with applicable DOE Orders and Directives regarding the control of Nuclear Materials, which have been or may be issued to the Contractor by DOE, and shall make a part of each purchase order, subcontract, and other commitment involving the use of Nuclear Materials for which the Contractor has accountability, which it enters into under this contract, appropriate terms and conditions for the use of Nuclear

Materials and the responsibilities of the subcontractor or vendor regarding control of Nuclear Materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of Nuclear Materials for which the Contractor has accountability, the terms and conditions with respect to Nuclear Materials shall also identify who has the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

## **H.27 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN**

Within 120 days after the effective date of the contract, the Contractor shall submit to the Contracting Officer for approval an Organizational Conflict of Interest (OCI) Management Plan. The Plan shall describe an aggressive program to identify conflicts of interest, avoid conflicts of interest and facilitate the mitigation of actual conflicts of interest and shall be periodically updated as required during the term of the contract. The Plan shall consist of the following:

- (a) The procedures for identifying and evaluating past, present, and anticipated contracts of the Contractor, its related entities and the entities named in the Special Contract clause, entitled Performing Entity, and their related entities.
- (b) The procedures the Contractor will utilize to identify conflicts.
- (c) The procedures for reporting actual or potential conflicts of interest to the Contracting Officer.
- (d) The procedures the Contractor will utilize to oversee, implement, and update the OCI Plan, to include assigning responsibility for management, oversight and compliance to an individual in the Contractor's organization with full authority to implement the Plan.
- (e) The procedures for ensuring all DOE required representations and certifications and factual analyses are timely submitted to DOE for approval.
- (f) The procedures for protecting agency information that could lead to an unfair competitive advantage if disclosed, collecting disclosure agreements covering all individuals, subcontractors, and other entities with access to agency-sensitive information, and physical safeguards, if necessary.
- (g) The procedures for OCI training and self-education of employees, as well as the frequency of recertifications.
- (h) The enforceable disciplinary mechanisms to be used by the offeror.

(Note: This Plan is separate from that required in the Special Contract Clause entitled,



Technology Transfer.)

**H.28 PERFORMANCE BASED INCENTIVES AND SUPERSTRETCH  
PERFORMANCE BASED INCENTIVES (Applicable to NNSA Incentives)**

- a. As contemplated by the Contract Clause in Section I entitled, Total Available Fee, Base Fee Amount and Performance Fee Amount, additional incentives may be negotiated and added to this contract for the NNSA work requirements. However, the Government shall not consider the creation of additional incentives unless: (1) the estimated cost of performing the contemplated work exceeds \$10,000,000; (2) the work has the potential for generating significant cost savings; or, (3) incentivization of the work is otherwise determined by the Government to be in its best interests.
- b. Over the course of this contract the parties may agree to negotiate SuperStretch Performance Based Incentives (SSPBI's) for certain unfunded or accelerated activities. Candidate SSPBI's are not a part of the contract, and shall not be pursued by the Contractor unless and until funds are provided for the scope of such SSPBI's through an approved Baseline Change Proposal (BCP) action in accordance with the SR Work Authorization and Control Process. It is acceptable for the Contractor to perform limited, preparatory efforts toward unfunded/accelerated SSPBI's so long as such work is clearly within the scope of the existing, approved funding baseline.
- c. Candidate SSPBI's may be negotiated in advance, including associated fees, or may be negotiated at the time the work is identified. As a general rule, SSPBI's should include provisions for incremental payments for partial performance, as discussed in this clause.
- d. A SSPBI may be activated by an approved BCP when its work scope is partially funded or fully funded.
- e. If a SSPBI is completed because the Contractor is able to redirect resources from other work which is being accomplished satisfactorily at costs below the established baseline for such work, the Contractor will be entitled to earn the full fee negotiated for that SSPBI.

SSPBI fee shall not be made available or earnable if the availability of funds result from:

1. Performance yielding unacceptable programmatic results.
2. Implementing changes from specific, formal DOE direction/guidance or changes in site mission.
3. Unplanned program slippage, savings from non-validated funding baselines, or gross competitive bid underruns.
4. Substitution of previously identified excess material (i.e.; material from the

contractor sort yard) for purchased material.

5. Cost avoidance for utilizing existing offices/facilities on site in lieu of leasing or constructing new office space/facilities.
  6. Implementation of accepted site practices.
    - (a) Conducting an Official Value Engineering Analysis.
    - (b) Changes through Conceptual Design and Title I design phases.
- f. If a SSPBI is funded in whole or in part (including fee) by DOE providing additional funding above the established baseline, the Contractor will be entitled to earn a negotiated proportion of any previously set fee for that SSPBI. If a SSPBI is funded by both methods, a reasonable fee will be negotiated by the parties. The SSPBI will be amended to reflect the negotiated fee prior to the incorporation of the SSPBI through a BCP. In the event that the parties cannot agree, the matter will be resolved by Contracting Officer determination which will be subject to the "Disputes" clause of the Contract.
- g. Authorization Process to Perform SSPBI's:

The Contractor shall prepare a BCP which shall identify the source of funds, or source of future funds savings, and the rationale for selecting that SSPBI. Funds shall not be reallocated or reprogrammed from a functional area with an incentivized but unfunded/accelerated work requirement unless the unfunded/accelerated incentive has been completed, or DOE determines the SSPBI has evolved into a higher priority than the existing unfunded/accelerated work requirement. DOE's decision on whether to reallocate or reprogram funds for work will be final and the parties agree that decision is not subject to the Disputes clause of the contract. DOE will approve or reject the BCP as part of the Change Control process.

- h. SSPBI Work Authorization and Fee Amounts

If the Contractor identifies funds through cost savings or other redirection of resources, any underfunded PBI work must ordinarily be fully funded by the Contractor unless the underfunding is caused by DOE direction to perform additional work scope. The Contractor will ordinarily be given flexibility to prioritize the funding of the underfunded work, within the appropriate funding categories and classifications. If funds remain after all other work is addressed, they may be redirected to SSPBI's. However, there may be situations where circumstances warrant the funding of SSPBI's prior to funding an underfunded PBI work element. In these cases, the Contractor may submit a BCP and seek funding for the SSPBI, and an equitable adjustment to the fee for the PBI.

If DOE provides new Budget Authority (BA), these funds will ordinarily be directed to non-incentivized unfunded/accelerated work or to emerging issues. However, when circumstances merit, DOE BA may be directed to SSPBI's. DOE's decision on whether to reallocate or reprogram funds for work will be final and the parties agree that decision is not subject to the Disputes clause of the contract.

i. Incremental Funding of SSPBI's

At the time an SSPBI is funded by a BCP, the BCP will identify if the SSPBI is to receive "full" fee (i.e. 100% of the amount identified to that SSPBI) or a "negotiated" fee (a reduced amount negotiated between 50% and 100% of the identified fee), based on the source of the funds directed to the SSPBI. The amount of any negotiated fee (within the 50% - 100% parameters) will depend on the circumstances.

If SSPBI's are incrementally funded, the fee payment process will be defined in the SSPBI. As additional funds are identified for incrementally funding the SSPBI, the Contractor and Contracting Officer will review the status of performance and ensure the original cost estimates and fee are accurate, and that adequate funds will be available to cover all costs, including fees.

## **H.29 PERFORMANCE/TECHNICAL DIRECTION**

- (a) This clause supplements the Contract Clause in Section I entitled, Technical Direction.
- (b) In addition to those functions specifically reserved throughout this Contract for the Contracting Officer, the Contracting Officer shall be the sole authority for assignment or modification of Work Authorization Directives (WADs), approval and modification of Performance Based Incentives (PBIs), establishment of work priorities, and directing work requiring the expenditure of funds which have been obligated for performance of this Contract.
- (b) Authority to take certain actions associated with performance of the contract has been officially delegated in writing to selected DOE-SR officials, who may or may not be Contracting Officers Representatives. These officials are authorized to act within the stated limits of the delegation in SR Manual 300.1.1A, Chapter 1, SR Functions, Responsibilities and Authorities Procedure, or superseding documents, or in a separate delegation, a copy of which has been provided to the Contractor. These activities do not constitute Technical Direction.
- (c) The Contractor shall only accept Technical Direction if provided in writing and if within terms of the SOW, a WAD or the WA/EP. Technical Direction shall not authorize the Contractor to exceed the total funds obligated on the Contract or any estimated cost or delay in delivery in a WAD or a PBI/Special Performance Area (SPA). It is expected

that there will be full and open communication between the functional counterparts of the DOE and the Contractor's organization.

### **H.30 PERFORMANCE GUARANTEE**

The Contractor is required by other provisions of this Contract to organize a dedicated corporate entity to carry out the work under the Contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Appendix G. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

### **H.31 PERFORMANCE IMPROVEMENT AND COLLABORATION**

As a key component of the Department's nuclear weapons complex, the contractor agrees to work in collaboration with other production plants and design laboratories in the Nuclear Weapons complex to achieve a balanced nuclear weapons complex workload and to create a modern integrated complex with unique and interdependent facilities. To this end:

- (a) The Contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the Contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of Contract performance or reduce overall cost of operation under the Contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the Statement of Work and performance measures of this Contract.
- (b) The Contractor agrees to work collaboratively with the Department, and all other DOE management and operating contractors, for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including

lessons learned, subject to security considerations and the protection of data proprietary to third parties.

- (c) The Contractor may consult with the Contracting Officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The Contractor may request the assistance of the Contracting Officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this Clause.
- (d) The Contractor shall notify the Contracting Officer and seek approval where necessary to fulfill its obligations under the Contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this Contract.

**H.32 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS**

- (a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered. The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Furthermore, all wildlife must be protected except for management programs approved by the Contracting Officer.
- (b) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

**H.33 PRIVACY ACT SYSTEMS OF RECORDS**

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Contract Clause entitled "Privacy Act."

<u>DOE System No.</u>	<u>Title</u>
DOE-33	Personnel Medical Records (Present and former DOE employees, Contractor Employees, and other persons at Savannah River Site receiving routine, periodic, and emergency medical examination or treatment.)

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- DOE-35 Personnel Radiation Exposure Records (Past and present DOE and Contractor employees and other persons having access to Savannah River Site.)
- DOE-38 Occupational and Industrial Accident Records (The DOE and Contractor employees and other persons having access to Savannah River Site and having accidents at Savannah River Site, or individuals involved in accidents with DOE or Contractor employees.)
- DOE-45 Weapon Data Access Control System (The DOE, DOD, or other Government agency employees, Government Contractors, consultants, and other persons requiring access to classified weapons data or Savannah River Site nuclear weapons program facilities.)
- DOE-50 Personnel Assurance Program (PAP) (The DOE or Contractor employees or individuals under the SRS Plant PAP.) Records of medical examination results and PAP-related training records.
- DOE-51 Employee and Visitor Access Control System (The DOE and Contractor employees and other individuals working or visiting at SRS Plant.)

The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual Contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the Contract Clause entitled "Privacy Act."

In addition to the above, the Contractor shall neither request nor utilize social security numbers as a personal identifier of Federal employee's unless required to do so by law or regulation, DOE Order or as agreed to in writing by the Contracting Officer.

### **H.34 PROVISIONAL AND INCREMENTAL PAYMENT OF PBI INCENTIVES**

- (a) A provisional payment is a payment of fee made for partial completion of a Performance Based Incentive (PBI) prior to completion of the PBI, on the basis of demonstrating progress toward completion of the PBI. Provisional payments must be repaid in whole or in part, as determined by the Contracting Officer, if the PBI is not successfully completed.
- (b) Provisional or incremental payments may be made based upon earned value, completion of milestones or any other methodology as set forth in the PBI. Provisional payments may be made upon the completion of progress or events which are interim to delivery of the final product or service required. If progress or a milestone is determined to have lasting, intrinsic value, payments will not be provisional, but will be established as incremental payments for partial accomplishment of the work. Each PBI will establish if the payments are to be provisional, incremental or a combination thereof.
- (c) If the contractor fails to fully accomplish a PBI for which it has received provisional payments, the Contracting Officer will determine if the Contractor is to refund part or all of the provisional payments it has received for that PBI. Any refund made shall include interest. Interest will be paid at the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which any unearned provisional payments were made.

### **H.35 QUALITY ASSURANCE SYSTEM**

The Contractor shall establish and maintain a formal Quality Assurance Program approved by the DOE as required by the clause entitled Laws, Regulations and DOE Directives. Any subcontracts in support of the Contractor's work shall require subcontractors to comply with applicable elements of the Contractor's approved Quality Assurance Program or the subcontractor's program(s) as approved by the Contractor.

### **H.36 RECOGNITION OF PERFORMING ENTITY**

- (a) The Contractor and the Government recognize that the parties named below form the performing entity on which the award of this contract was based.

Westinghouse Savannah River Company  
Bechtel Savannah River, Inc.  
BWXT Savannah River Company  
BNFL Savannah River Corporation

- (b) Accordingly, the Contractor and the Government agree that:
- (1) The exemption from the certification requirement of FAR 15.804-2, as set forth in DEAR 970.1508-1, shall extend to the business arrangement, which establishes the special relationship recognized in paragraph a. above, between the Contractor and the parties named in paragraph a. above. The requirements of the Contract Clause entitled, DEAR 970.5204-24 Subcontractor Cost or Pricing Data (DEC 1994) do not apply to these business arrangements.
  - (2) The Contractor shall take no action to replace the components of the offeror named in a. above without the prior written approval of the Contracting Officer.
  - (3) If subcontract arrangements are utilized in the business arrangement, each subcontract shall contain an allowable cost clause providing for, as a minimum, the same advance agreements on allowability of costs and for Government approval of such costs as contained in this contract.
  - (4) The performing entity shall operate under a single set of policies and procedures governing all human resources matters and the Contractor's managerial personnel (as the term is defined in the Contract Clause entitled, Contractor's Managerial Personnel) shall ensure all employees of the performing entity are treated fairly, equitably and in a consistent manner.

### **H.37 RELEASE OF SUBCONTRACT INFORMATION**

The purchasing system developed in accordance with the Contract Clause entitled, Contractor Purchasing System, must provide for notification to bidders/offerors that an abstract of bids/offers/proposals containing the names of bidders/offerors and the lump sum or unit prices submitted will be released after award to any interested party and that submission of a bid/offer/proposal constitutes authorization to release such prices. In no event will the Contractor release other information regarding a bid/offer/proposal without the written permission of the submitting firm.

### **H.38 REPORTING REQUIREMENTS (For NNSA Reporting)**

- (a) Work Breakdown Structure (WBS). Except as provided for elsewhere in the contract, the WBS, as approved by the Contracting Officer, shall provide the basis for all reports required under this subsection. The WBS shall be derived from the SOW and shall otherwise conform to any implementation guidance which may be provided by the Contracting Officer.



- (b) Periodic Plans and Reports. The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide information regarding budgeted cost versus actual cost, schedule performance against milestones and estimated cost at completion.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.

Plans and reports shall be prepared by the Contractor in such a manner as to provide for--

- (1) consistency with the Contract Statement of Work, the WADs, the approved WBS, and the existing accounting structure; and
  - (2) correlation of data among the various plans and reports.
- (c) Changes in Work Effort. The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Authorization System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the Statement of Work or WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer.
- (1) Incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;
  - (2) Reconcile estimated costs for those elements of the WBS identified in the Contract as either priced line items or discrete WADs, and for those elements

at the lowest level of the project summary WBS with current performance measurement budgets in terms of:

- (i) Changes to the authorized work; and,
  - (ii) Internal replanning in the detail needed by management for effective control;
- (3) Prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments;
- (4) Prevent revisions to the Contract estimated costs except for Government-directed or approved changes to the contractual effort; and
- (5) Document, changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- (d) The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.
- (e) The Contractor shall include the requirements of subparagraphs (b) and (d) in all subcontracts that are cost-reimbursement type of contracts when--
- (1) The value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
  - (2) The Contracting Officer determines prior to award that the contract/subcontract effort is, or involves, a critical task related to the Contract.

### **H.39 REPRESENTATIONS AND CERTIFICATIONS**

The Representations, Certifications, and Other Statements of Offeror for this Contract as completed by the Contractor and dated September 7, 1995, are hereby incorporated in this Contract by reference.

### **H.40 RESPONSIBLE CORPORATE OFFICIAL**

Notwithstanding the Section H provision entitled "Performance Guarantee," the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor.

Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name:                                 Ralph R. DiSibio                                

Position:                 President                

Company:                 Washington Energy and Environment                

**H.41 RIGHTS TO SUBCONTRACTOR PROPOSAL DATA**

Except as otherwise authorized by the Contracting Officer, the Contractor, pursuant to FAR 27.409(s), shall include the clause of FAR 52.227-23, "Rights to Proposal Data (Technical) (JUNE 1987)," in any subcontract awarded based on consideration of a technical proposal.

**H.42 SEGREGATION OF COSTS**

- (a) Whenever the Contract contains both fixed price and cost type arrangements, the Contractor shall maintain separate accounts for each unique contract type arrangement, by task order or other suitable accounting procedure, of all incurred segregable, direct costs of work, allocable to the work effort directly related to each contract arrangement.
- (b) Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by Work Authorization Directive or other suitable accounting procedure, of all incurred segregable, direct costs of work, allocable to the work effort directly related to the incentive arrangement.
- (c) If the Contractor has initiated work pursuant to the clause entitled, Cost Reduction Incentive Program, if included in this contract, that a proposal has been accepted, the Contractor, for each cost reduction incentive proposal, shall maintain separate accounts, by Work Authorization Directive or other suitable accounting procedure, of all incurred segregable, direct costs, both changed and not changed, allocable to the changed work effort set forth in the applicable Cost Reduction Incentive Proposal.
- (d) The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with the clauses Ownership of Records and DEAR 970.5204-9, Accounts, Records and Inspection, of this contract, but, in no case, for a period of less than three years following the Government's determination of the applicable incentive fee.

**H.43 SEPARATE CORPORATE ENTITY**

The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

**H.44 SINGLE FEE**

- (a) The parties agree there will be a single fee paid to the Contractor and the parties identified in paragraph a. of the Special Contract Clause entitled, Recognition Of Performing Entity, as may be modified by mutual agreement of the parties.
- (b) The Contractor further agrees there will be no costs charged to this contract which represents fee or profit for any entity named in paragraph a. of the Special Contract Clause entitled, Recognition Of Performing Entity, without written approval of the Contracting Officer.

**H.45 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN**

The Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of the Contract Clause, entitled, "Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan" and approved by the Contracting Officer is incorporated into this Contract as Appendix C in Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan which shall establish subcontracting goals, as described in paragraph (d)(1) and (2) of the above Contract Clause. The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this Contract.

**H.46 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS PARTICIPATION TARGETS**

Small Business and Small Disadvantaged Business participation targets submitted by the Contractor in its proposal for purposes of evaluation for award will be incorporated into this Contract. To the extent that such concerns specifically were identified in the proposal, they are also incorporated into this Contract and the Contractor shall notify the Contracting Officer of any substitutions of firms. The Contractor's performance in meeting the targets contained in its proposal and its demonstrated commitment to maximizing the participation of Small Business and Small Disadvantaged Business concerns in Contract performance will be assessed as part of the expected performance under this Contract.

**H.47 RESERVED**

**H.48 SPECIAL CONSTRUCTION INDUSTRY COST AGREEMENT**

The Contractor is authorized to establish membership in the International Brotherhood of Electrical Workers/National Electrical Contractors Association (IBEW/NECA) industry fund. The cost of maintaining such membership is an allowable cost under the contract.

**H.49 STOP WORK AND SHUT DOWN AUTHORITY-ENVIRONMENT, SAFETY AND HEALTH**

- (a) Definition: Stop Work - The suspension of a specific activity or activities by the Contracting Officer or authorized designee based upon the determination or observation of conditions which are immediately dangerous to the life or health of the workers, the public, or the environment or for any other reason determined to be in the best interests of the Government from an environment, safety and health (ES&H) perspective. Stop-Work Orders for non-ES&H reasons shall be in accordance with the Contract Clause contained in Section F entitled, FAR 52.242-15 Stop-Work - Alternate I (APR 1984).
- (b) The Contracting Officer, or authorized designee, may at any time during the performance of this contract issue a stop-work order and shutdown facility operations or stop-work on specific activities of the Contractor or any Subcontractor, in accordance with the following:
  - (1) The Contracting Officer shall notify the Contractor, in writing, of any noncompliance with applicable ES&H requirements which come to the attention of the Contracting Officer. After receipt of such notice, the Contractor shall immediately take corrective action, consistent with the work authorization provisions of the Special Contract Clause entitled, Performance/Technical Direction. In the event that the Contractor fails to take corrective action, the Contracting Officer or authorized designee may, without prejudice to any other legal or contractual rights of DOE, issue a written order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer in accordance with applicable DOE Orders/Directive Implementation Instructions, if any. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
  - (2) If at any time during performance of the contract work, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the health or safety of individuals or the environment, the Contracting Officer or authorized

designees may, without prejudice to any other legal or contractual rights of DOE, issue a verbal order, to be immediately confirmed in writing before departing the incident site, stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contracting Officer in accordance with applicable DOE Orders/Directive Implementation Instructions, if any. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

- (c) Duly appointed DOE-SR Facility Representatives; Deputy Managers; Assistant Managers; NNSA-SRSO Manager and Deputy Manager; and the Director, OSSC are authorized designees of the Contracting Officer for the purposes set forth in this clause. Other authorized designees shall be approved through the process described in the Special Contract clause in Section H entitled, Performance/Technical Direction.
- (d) The Contractor shall include this clause, modified appropriately to include Contractor Representatives, in all subcontracts containing the Contract Clause entitled, DEAR 970.5204-2 Integration of Environment, Safety and Health Into Work Planning and Execution (Jun 1997).

#### **H.50 SUBCONTRACT LABOR LAW APPLICATION**

- (a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (b) For subcontracts relating to construction, refer to the Contract Clause entitled "Government Facility Subcontract Approval."

#### **H.51 SUBCONTRACTOR SELECTION**

- (a) The Contractor shall establish in its purchasing system, developed as required by the Contract Clause entitled, Contractor Purchasing System, procedures for evaluating the environmental, safety, and health records of companies submitting offers/bids/proposals for performing subcontract work in Government-owned or leased facilities under this contract. The procedures shall provide for evaluation of environmental, safety, and health indicators (e.g., workers' compensation costs, injury/illness incidence rates, lost workday incidence rates, property damage, fire loss rates, experience modification rate, etc.), as appropriate, for the work to be performed.
- (b) Only those subcontractors with acceptable records shall be selected for award of subcontracts for work in Government-owned or leased facilities.

## H.52 SUBCONTRACTS

Prior to the placement of subcontracts and in accordance with the clause, Contractor Purchasing System, the Contractor shall ensure that any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the Subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any Subcontractor privity of contract with the Government.

## H.53 THIRD PARTIES

Nothing contained in this Contract or its amendments shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This provision is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

## H.54 TRAVEL RESTRICTIONS

- (a) For Contractor travel expenses incurred between October 1, 2000 – September 30, 2001, a ceiling limitation of \$7,385,000 shall apply to all reimbursements made for Contractor travel expenses under this Contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the Contracting Officer.
- (b) Notwithstanding any other provisions of the Contract, the Contractor further agrees that none of the funds obligated under the Contract may be used to reimburse employee travel costs incurred on or after October 1, 2000 and before October 1, 2001 which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. Costs which exceed these rates and amounts will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- (c) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
  - (1) Federal Travel Regulations (FTR) for travel within the 48 states;
  - (2) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or

- (3) Standardized Regulations (SR) for travel allowances in foreign areas.
- (d) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and when deemed warranted (as provided for in FTR Sec. 301-11.300) are applicable to Contractor travel.
- (e) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

#### **H.55 TYPE OF CONTRACT**

This is a performance based contract for the integrated team management of a DOE facility governed by the provisions of Federal Acquisition Regulation 17.6 and Department of Energy Acquisition Regulation 917.6. It is a cost-reimbursement contract with provisions for a general performance fee and performance incentives as provided for in the clause in Section I entitled, Total Available Fee: Base Fee Amount And Performance Fee Amount.

#### **H.56 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this Contract may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE Regulations and Directives.

#### **H.57 WITHDRAWAL OF WORK**

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Government contractor or to have the work performed by Government employees.
- (b) Work may be withdrawn: (1) for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for performance by the Contractor or any entity named in the Special Contract Clause entitled, Recognition Of Performing Entity which does not conform with contract



requirements; or, (4) for any other reason deemed by the Contracting Officer to be in the best interest of the Government. DOE reserves the right to direct the assignment of any subcontract to DOE whenever it deems it in its best interests.

- (c) If withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination. If work has not been authorized under a Work Authorization Directive and there is no impact on the Contractor's staffing, the fee amount set forth in the Schedule shall be equitably adjusted, under the Clause entitled, Changes and the Section H clause entitled, Multi-Year Fee. If the Contractor's staffing is impacted, the work shall be terminated in accordance with the procedures in the Contract Clause entitled, Termination.
- (d) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required pursuant to the Contract Clause in Section I entitled, Technical Direction.

#### **H.58 WORK AUTHORIZATION SYSTEM FOR NNSA WORK**

- (a) Prior to the start of each Fiscal Year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the Contracting Officer or other designated official, a detailed description of work, a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year.
- (b) The Contractor and DOE shall mutually establish a budget of estimated costs, detailed description of work, and schedule of performance for each task at level 3 or as otherwise specified by the Contracting Officer. The established description of work, estimated costs, and schedule of performance shall be incorporated into Work Authorization Directives (WAD). WADs, signed by the Contractor and issued by the Contracting Officer, which are incorporated by reference into this Contract. If agreement cannot be reached on the scope, schedule, and estimated cost for the WADs, the Contracting Officer shall issue unilateral WADs pursuant to this clause which shall not be subject to appeal under the Contract Clause entitled "Disputes."
- (c) No activities shall be authorized and no costs incurred until either the Contracting Officer has issued WADs or the Contracting Officer has issued direction concerning continuation of activities.
- (d) Work Authorization Directives. The WADs authorizing the Contractor to proceed with performance shall be provided to the Contractor by the Contracting Officer. Each WAD so issued will include as a minimum the following:

- (1) Authorization number and effective date;
  - (2) Description of work;
  - (3) Estimated cost (and estimated cost for the work to be performed under this authorization if the WAD performance schedule exceeds the current contract);
  - (4) Appropriate performance objectives, schedule, and milestone dates;
  - (5) Cost, schedule, and all other reporting requirements;
  - (6) Date of issue
  - (7) Contractor's signature
  - (8) Contracting Officer's signature.
- (e) **Technical Direction.** Government direction of the performance of all work authorized for performance under this Contract shall be in accordance with the Section I clause entitled Technical Direction and the Section H clause entitled, Performance/Technical Direction.
- (f) **Modification of Work Authorization Directives.** The Contracting Officer may at any time and without notice issue changes to the WADs within the SOW of the Contract requiring additional work, or directing the omission of, or changes to the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. In addition, the Contractor shall notify the Contracting Officer immediately whenever the cost incurred to date plus the projected cost to complete the work on any WAD is expected to exceed or underrun the estimated cost by ten percent of the WAD. In this case, the Contractor shall submit a proposal for a change in the WAD in accordance with paragraphs (a) and (b) of this clause.
- (g) **Expenditure of Funds and Incurrence of Cost.** The performance of work and the incurrence of cost in the execution of the SOW of this Contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Contract Clause entitled "Obligation of Funds."
- (h) **Order of Precedence.** This clause is of lesser order of precedence than the Contract Clause entitled "Allowable Costs, Base Fee, and Performance Fee (Management and Operating Contracts)"; "Obligation of Funds"; and "Payments and Advances." The Contractor is not authorized to incur costs on any WAD which is not in compliance with the other terms and conditions of this Contract.
- (i) In the event there is a conflict between the requirements of this subsection and Section J, Appendix E, "List of Applicable Directives," as amended, the Contractor shall obtain guidance from the Contracting Officer.

- (j) Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

## **H.59 WORK FOR OTHERS**

- (a) Subject to the prior written approval of the Contracting Officer, and in compliance with the other terms and conditions of this contract, the Contractor may perform activities for Non-Federal entities or other Federal Agencies, under the Contract, involving the use of equipment, facilities, or personnel. The Contractor's request for DOE approval shall set forth in detail the nature of the outside activities to be performed, the equipment, facilities or personnel required, and the financial and contractual arrangements proposed to pay for the cost of such work. The Contracting Officer shall consider such a request, being guided, among other factors, by the current or future needs of DOE's programs for the equipment, facilities, or personnel to be utilized in the performance of such outside activities. Primary considerations in approving such work are that the proposed work will not place the Contractor in direct competition with domestic non-Federal entities, will not adversely impact execution of the Contractor assigned programs, and will not create a potentially detrimental future burden on commitment of DOE resources. If the Contracting Officer approves such a request, the Contractor and DOE shall agree upon the terms and conditions which would apply to such work. This agreement may provide for receipt by the Government of all or part of such sum as represents the payment to be received by the Contractor for such outside activities; provided, however, that DOE may contribute the use of certain equipment, facilities, or personnel for the performance of such outside work if it determines that it desires to foster the activity in some measure. Except as otherwise approved by DOE, all clauses of this contract shall be deemed to be applicable to the performance of such work. This clause shall not be construed as amending or superseding the requirements of the Statement of Work.
- (b) The Contractor shall promptly advise the Contracting Officer of any advance notices of, or solicitations for, a major system acquisition requirement received from other Federal agencies pursuant to FAR 34.005 which would logically involve DOE facilities or resources operated or managed by the Contractor. The Contractor shall not respond to or otherwise propose to participate in response to the requirements of such

solicitations unless the Contractor has obtained written approval of the Contracting Officer.

## H.60 ACCOMPLISHMENT OF MISSION OBJECTIVES

- (a) It is the expectation of DOE and NNSA that the Contractor shall assume full responsibility for management, integration and operation of the site in accordance with work assigned. The DOE/NNSA has responsibility to establish what is to be accomplished and the applicable standards and requirements to be met, and to oversee the work of the Contractor. The Contractor is expected to utilize its expertise and ingenuity in performance of the work, including making choices from acceptable alternatives on how the work is to be accomplished.
- (b) Accomplishment of the EM and NNSA mission objectives is a mutually beneficial goal for the contractor and Government which can be facilitated by free and open exchange of information and discussion of performance issues as well as the full cooperation of both parties. This free and open exchange process relieves neither party of its responsibilities under the contract but facilitates the achievement of the mutual goal of mission achievement. The contractor is expected to openly discuss plans for changing processes and procedures with its DOE/NNSA counterparts, not for Government approval but to ensure the Government has a full understanding of what is transpiring on the site. Full and open communication promotes mutual trust and respect which facilitates the achievement of mission objectives. Federal employees are expected to support and facilitate the contractor's achievement of the performance requirements within the limits of applicable laws, regulations and directives, including expediting required DOE/NNSA approvals or other support as necessary. All contractor and Federal employees are expected to exhibit professionalism at all time and to jointly work towards the achievement of mission objectives.
- (c) The Contract Clause in Section I entitled, Laws, Regulations and Directives contemplates a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, while complying with the basic contract requirements. This tailoring of requirements is to be applied to all requirements and supports the DOE and contractor mutual goal of successful attainment of mission requirements. It is the intent of the parties to modify and/or eliminate discretionary tasks or site created processes to accomplish work scope requirements, while remaining in full compliance with stated contract requirements. Relief from stated contract requirements shall be obtained via a contract modification or through an exemption or other appropriate regulatory relief as specified in the regulation.

Where WSRC is concerned that contract requirement implementation plans may be

perceived by others as not in accordance with contract requirements, WSRC will request in writing from DOE confirmation that plans are in accordance with requirements. WSRC will present well justified proposals and DOE will respond to all requests within 14 calendar days.

- (d) Free and open exchanges of information should not result in undue interference or excessively detailed direction from the Government. If in the opinion of the Contractor, DOE/NNSA employees act in a manner inconsistent with the expectations of this clause or interfere with the Contractor's operations, the Contractor shall report the incident to the Contracting Officer or a Contracting Officers Representative for resolution. Pending resolution of the issue(s), the Contractor shall continue performance as may have been directed by DOE/NNSA via formal Performance/Technical Direction or permit continued inspection of the Contractor's operations by DOE/NNSA. Similarly, DOE/NNSA employees are to report to the Contracting Officer or a Contracting Officers Representative any actions by the contractor which are inconsistent with these expectations.

#### **H.61 WORK AUTHORIZATION DIRECTIVES/ MANAGEMENT OF COST-PLUS INCENTIVE-FEE ARRANGEMENTS (Applicable to NNSA PBIs)**

Incentive Fees. Cost-plus-incentive fees will be identified in separate Work Authorization Directives (WAD), as provided for in the Special Contract Clause entitled, Performance/Technical Direction, and be negotiated, administered and paid in accordance with the following:

1. Target cost and target fee: The target cost and target fee, minimum and maximum fee and share arrangement will be specified in the Schedule and subject to adjustment if the WAD authorizing the work is modified in accordance with paragraph 4 below.
2. Definitions:
  - (A) "Target cost" as used in this contract, means the estimated cost of the WAD as initially negotiated or as adjusted in accordance with paragraph 4 below.
  - (B) "Target fee" as used in this contract, means the fee initially negotiated on the assumption that the WAD would be performed for a cost equal to the estimated cost as initially negotiated or as adjusted in accordance with paragraph 4 below.
3. Withholding of Payment: Normally, the Government shall pay the target fee to the Contractor as specified in the schedule. No fee payments shall be drawn down from the Letter of Credit (if any) without the specific written approval of the Contracting Officer and may be adjusted as provided for in the Contract Clause entitled, Payments and Advances. If provisional fee payments are authorized in the WAD, when the Contracting Officer considers that performance or cost indicates the Contractor will not

achieve targets, the Government may pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee.

After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less.

4. Equitable Adjustments: When the work under a WAD is increased or decreased via Change Control or when an equitable adjustment is required pursuant to any other clause, equitable adjustments in the target cost, target fee, minimum fee and maximum fee and arrangement, as appropriate, shall be negotiated, the WAD modified through the Change Control process and the contract Schedule formally modified.
  
5. Fee Payable:
  - (A) The fee payable under a WAD shall be adjusted based upon the fee adjustment values set forth in the WAD. In no event shall the fee be greater than or lesser than the minimum and maximum fees specified in the WAD.
  - (B) The fee shall be subject to adjustment, to the extent provided in paragraph 4 above and within the minimum and maximum fee limitations set forth in the WAD when the total allowable cost is increased or decreased as a consequence of determinations of allowable cost allowability made pursuant to the Contract Clause entitled, Allowable Costs and Fee.
  - (C) If a WAD is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.
  - (D) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of:
    - (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
    - (ii) The taxing effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
    - (iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the

Notice of Assistance Regarding Patent and Copyright Infringement  
clause;

- (iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance – Litigation and Claims clause;
- (v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Property clause; or,
- (vi) Any, claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(E) All other allowable costs are included in the “total allowable cost” for fee adjustment, unless otherwise specifically provided for in this contract.

6. Contract Modification: The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

## **H.62 Supplemental Special Provisions**

Incentives established under this contract may contain supplemental provisions regarding administration, procedures or fee payment that apply only to the incentive and do not have universal application to the contract.

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**SECTION I**

**PART II – CONTRACT CLAUSES**



**Part II - Contract Clauses**

**Section I**

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Note 2: Consistent with DEAR 970.5202, DEAR clauses indicated as “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

**SECTION J**

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Performance Evaluation and Measurement Plan and Contract Management/Oversight Plan, Parts I and II	By Reference

**Part II**

**Section I**

**CONTRACT CLAUSES**

**I.1. FAR 52.202-1 DEFINITIONS (OCT 1995) (As modified by DEAR 952.202-1  
DEFINITIONS (MAR 1995))**

- (a) The term "Head of Agency" means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means --
  - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that-

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- (i) Has been sold, leased, or licensed to the general public; or
  - (ii) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advanced in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for-
- (i) Modifications of a type customarily available in the commercial marketplace; or
  - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services-
- (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
  - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

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- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  - (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
  - (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means --
- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
  - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
  - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

- (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

**I.2. FAR 52.203-3 GRATUITIES (APR 1984)**

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
  - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
  - (2) 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.

**I.3. FAR 52-203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)**

- (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, the Government 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 Government contracts nor holds itself out as being able to obtain any 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 Government contracts nor holds out as being able to obtain any 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 Government contract.

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

**I.4. FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

- (a) Except as provided in (b) of this clause, 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 which exceed \$100,000.

**I.5. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)**

- (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

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

"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 monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this Contract which exceed \$100,000.

**I.6. FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may --
  - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
  - (2) Rescind the contract with respect to which --
    - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either --
      - (A) Exchanging the information covered by such subsections for anything of value; or

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- (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
  - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the Contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**I.7. FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)**

- (a) The Government, at its election, may reduce the price of a fixed -price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of sub-section 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
  
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be --
  - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.
  
  - (3) For cost-plus-award-fee contracts --
    - (i) The base fee established in the contract at the time of contract award;
  
    - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  
  - (4) For fixed-price-incentive contracts, the Government may --
    - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
  
    - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
  
- (c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
  
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this Contract for default. The rights and remedies of the government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**I.8. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN  
FEDERAL TRANSACTIONS (JUN 1997)**

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate

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district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, U.S.C., including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, U.S.C.
- (3) A special Government employee, as defined in Section 202, Title 18, U.S.C.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be

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considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of Title 31, U.S.C., among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
  - (i) Agency and Legislative Liaison by Own Employees.
    - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
    - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specially requested by an agency or Congress is permitted at anytime.



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(C) The following agency and legislative liaison activities are permitted at anytime where they are not related to a specific solicitation for any covered Federal action:

1 Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

2 Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

1 Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

2 Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

3 Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and Technical Services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

1 A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or

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technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

2 Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a

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bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of Federal Acquisition Regulation 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure.

- (A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
  - 1 A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - 2 A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

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- 3 A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (iv) Agreement. The Contractor agrees not to make any payment prohibited by this clause.
- (v) Penalties.
- (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (vi) Cost Allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**I.9. FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)**

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

**I.10. FAR 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (JUN 1996)**

- (a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.
- (b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

**I.11. FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

- (a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:
  - (1) The name of the subcontractor.
  - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**I.12. FAR 52.211-5 MATERIAL REQUIREMENTS (OCT 1997)**

(a) *Definitions.*

As used in this clause—

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products that have been recovered or diverted from solid waste including postconsumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.

- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this clause.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

**I.13. FAR 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT  
(OCT 1997)**

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) Representations and other instructions; (c) Contract Clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

**I.14. FAR 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS  
(DEC 1998)**

- (a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.
- (b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations(48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

- (c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.
- (d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

**I.15. FAR 52.215-18 -- Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Oct 1997)**

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

**I.16. FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 1999)**

- (a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (c) Definitions. As used in this contract



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- (1) "Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- (2) "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- (3) "Small business concern owned and controlled by socially and economically disadvantaged individuals" and "small disadvantaged business concern" means a small business concern that represents, as part of its offer that -
  - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;
  - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
  - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104 (c)(2); and
  - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).
- (4) "Small business concern owned and controlled by women" means a small business concern --
  - (i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and
  - (ii) Whose management and daily business operations are controlled by one or more women.
- (d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

**I.17. FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1999)**

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause--

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a Contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, HUBZone small business, small

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disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

- (2) A statement of--
  - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
  - (ii) Total dollars planned to be subcontracted to small business concerns;
  - (iii) Total dollars planned to be subcontracted to HUBZone small business concerns;
  - (iv) Total dollars planned to be subcontracted to small disadvantaged business concerns;
  - (v) Total dollars planned to be subcontracted to women-owned small business concerns.
  
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to -
  - (i) Small business concerns;
  - (ii) HUBZone small business concerns;
  - (iii) Small disadvantaged business concerns; and
  - (iv) Women-owned small business concerns.
  
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
  
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development

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Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --
  - (i) Small business concerns;
  - (ii) HUBZone small business concerns;
  - (iii) Small disadvantaged business concerns; and
  - (iv) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, HUBZone small business, small disadvantaged business and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will--
  - (i) Cooperate in any studies or surveys as may be required;
  - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

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- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations and in paragraph (j) of this clause; and
  - (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small business, HUBZone small business, small disadvantaged business or women-owned small business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating --
    - (A) Whether small business concerns were solicited and, if not, why not;
    - (B) Whether HUBZone small business concerns were solicited and, if not, why not;
    - (C) Whether small disadvantaged business concerns were solicited and, if not, why not;
    - (D) Whether women-owned small business concerns were solicited and, if not, why not; and
    - (E) If applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact --

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- (A) Trade associations;
  - (B) Business development organizations; and
  - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources.
- (v) Records of internal guidance and encouragement provided to buyers through --
- (A) Workshops, seminars, training, etc.; and
  - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
  - (2) Provide adequate and timely consideration of the potentialities of small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

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- (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
  
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--
  - (1) The master plan has been approved;
  - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
  - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
  
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
  
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
  
- (i) The failure of the Contractor or subcontractor to comply in good faith with--
  - (1) The clause of this contract entitled "Utilization of Business Concerns;" or
  - (2) An approved plan required by this clause, shall be a material breach of contract.

- (j) The Contractor shall submit the following reports:
- (1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
  - (2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

**I.18. FAR 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN  
(JAN 1999)**

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.



- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**I.19. FAR 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING (OCT 1999)**

- (a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.
- (b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may

be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

**I.20. FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES  
(FEB 1997)**

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 Contracting Officer.

**I.21. FAR 52.222-3 CONVICT LABOR (AUG 1996)**

The Contractor agrees not to employ in the performance of this Contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this Contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this Contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this Contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;
- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
- (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**I.22. FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -  
OVERTIME COMPENSATION (JUL 1995)**

- (a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) *Payrolls and basic records.*
  - (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of Contract work and shall preserve them for a period of 3 years from the completion of the Contract for all laborers and

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mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

- (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.*

The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

**I.23. FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**I.24. FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**I.25. FAR 52.222-26 EQUAL OPPORTUNITY (FEB 1999)**

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performance of this contract, the Contractor agrees as follows:
  - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

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- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
  - (i) employment;
  - (ii) upgrading;
  - (iii) demotion;
  - (iv) transfer;
  - (v) recruitment or recruitment advertising;
  - (vi) layoff or termination;
  - (vii) rates of pay or other forms of compensation; and
  - (viii) selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explains this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

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- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
  - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
  - (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
  - (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**I.26. FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

(a) *Definitions.* As used in this clause --

“All employment openings” includes all positions except executive and top management, those positions that will be filled from within the Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days’ duration, and part-time employment.

"Appropriate office of the State employment service system” means the local office of the Federal-State national system of public employment offices assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor’s organization” means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Veteran of the Vietnam era” means a person who --

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) *General.*

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Employment;



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- (ii) Upgrading;
  - (iii) Demotion or transfer;
  - (iv) Recruitment;
  - (v) Advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and
  - (viii) Selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.
- (c) *Listing Openings.*
- (1) The Contractor agrees to list all employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
  - (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
  - (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive Orders regulations concerning nondiscrimination in employment.
  - (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract clause.

(d) *Applicability.*

This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) *Postings.*

(1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**I.27. FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES  
(JUN 1998)**

(a) *General.*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

- (b) *Postings.*
- (1) The Contractor agrees to post employment notices stating—
    - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
    - (ii) The rights of applicants and employees.
  - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U. S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
  - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**I.28. FAR 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

- (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
- (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

- (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
  - (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
  - (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

**I.29. FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)**

- (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

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- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract. Material

*(If none, insert "None")* Identification No.

_____	_____
_____	_____
_____	_____

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

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- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
  - (ii) Obtain medical treatment for those affected by the material; and
  - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
- (3) The Government is not precluded from using similar or identical data acquired from other sources.
- (i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.
- (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.
  - (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

**I.30. FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)**

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA, the

emergency notice requirements of Section 304 of EPCRA, the list of Material Data Safety Sheets required by Section 311 of EPCRA, the emergency and hazardous chemical inventory forms of Section 312 of EPCRA, and the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA, and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

**I.31. FAR 52.223-10 -- Waste Reduction Program (August 2000)**

- (a) Definitions. As used in this clause --

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion. Waste prevention means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials. Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

- (b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C.6962, et seq.) and implementing regulations (40 CFR part 247).

**I.32 FAR 52.223-11 -- Ozone-Depleting Substances (Jun 1996)**

- (a) Definition. "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.



- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C.7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

**Warning**

Contains (or manufactured with, if applicable) \* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

**I.33. FAR 52-223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS  
(MAY 1995)**

The contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

**I.34. FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)**

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—
- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
  - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
  - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

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- (4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation (FAR); or
  - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—
- (1) The Contractor shall notify the Contracting Officer; and
  - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—
    - (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
    - (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—
- (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
  - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**I.35. FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

**I.36A. FAR 52.224-2 PRIVACY ACT (APR 1984)**

- (a) The Contractor agrees to--
  - (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the Contract specifically identifies--
    - (i) The system of records; and
    - (ii) The design, development, or operation work that the Contractor is to perform.
  - (2) Include the Privacy Act notification contained in this Contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and
  - (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this Contract which requires the design, development, or operation of such a system of records.
- (b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.
- (c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

- (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
- (3) "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**I.36B FAR 52.225-1 Buy American Act--Balance of Payments Program—Supplies (FEB 2000)**

- (a) Definitions. As used in this clause--

"Component" means any item supplied to the Government as part of an end item or of another component.

"Cost of components" means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means--

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a

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satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means supplies delivered under a line item of a Government contract.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- (b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States. The Balance of Payments Program provides a preference for domestic end products for supplies acquired for use outside the United States.
- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act--Balance of Payments Program Certificate."

**I.37. FAR 52.225-8 -- Duty-Free Entry (Feb 2000)**

- (a) Definition. Customs territory of the United States means the States, the District of Columbia, and Puerto Rico.
- (b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- (c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
  - (1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to

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the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the --

- (i) Foreign supplies;
  - (ii) Estimated amount of duty; and
  - (iii) Country of origin.
- (2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor's notification.
- (3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- (d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if --
- (1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and
  - (2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.
- (e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to non-governmental use.
- (f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.
- (g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the --
- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
  - (2) Government prime contract number;

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- (3) Identification of carrier;
  - (4) Notation "United States Government, \_\_\_\_\_ [agency], \_\_\_\_\_ Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from Tariff Schedules] \_\_\_\_\_, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.";
  - (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
  - (6) Estimated value in United States dollars.
- (h) The Contractor shall instruct the foreign supplier to --
- (1) Consign the shipment as specified in paragraph (g) of this clause;
  - (2) Mark all packages with the words "United States Government" and the title of the contracting agency; and
  - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- (i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the --
- (1) Foreign supplies;
  - (2) Country of origin;
  - (3) Contract number; and
  - (4) Scheduled delivery date(s).
- (j) The Contractor shall include the substance of this clause in any subcontract if --
- (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
  - (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

**I.38. FAR 52.225-9 Buy American Act--Balance of Payments Program--Construction Materials (FEB 2000)**

(a) Definitions. As used in this clause--

"Component" means any article, material, or supply incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means--

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.



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"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- (b) Domestic preference.
- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.
  - (2) This requirement does not apply to the construction material or components listed by the Government as follows:  
\_\_\_\_\_NONE\_\_\_\_\_
  - (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that--
    - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;
    - (ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
    - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

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- (1)
  - (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including--
    - (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Price;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

- (3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.
- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**I.39. FAR 52.225-13 -- Restrictions on Certain Foreign Purchases (July 2000)**

- (a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).
- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**I.40 FAR 52.227-10 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (APR 1984)**

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

- (b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.
- (c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.
- (d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.
- (e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

**I.41 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)**

Except for data contained on pages Sections 5.2, 5.4, 5.12, 5.13, 5.16, 5.17, 5.18, 5.19, 5.22, and 5.24 and Appendixes A, B, and C of Initial Written Proposal Information dated September 13, 1995, and Fee Plan and Risk Assumption/Fee Consideration submittal required by RFP Part 4, Subsections 5.25 and 5.26, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated September 13, 1995, et seq. upon which this contract is based.

**I.42. FAR 52.229-10 NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (OCT 1988) (As modified by DEAR 970.2904-1)**

- (a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this Contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the Contract number.

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- (b) (Modified) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this Contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the "Allowable Costs and Fixed Fee Clause." of this Contract except as provided in paragraph (d) of this clause.
- (c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the United States Department of Energy and the New Mexico Taxation and Revenue Department.
- (d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.
- (e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.
- (g) The United States Department of Energy may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the United States Department of Energy, may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the United States Department of Energy to represent its Contractor.
- (h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

**I.43. FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)**

- (a) Unless the Contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall-
  - (1) *(CAS-covered Contracts Only)* By submission of a Disclosure Statement, disclose in writing the Contractor'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 allocating indirect costs. The practices disclosed for this Contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor 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 Contractor's cost accounting practices in accumulating and reporting Contract performance cost data concerning this contract. 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 Contract and the Disclosure Statement must be amended accordingly. If the Contract price or cost allowance of this Contract is affected by such changes, adjustment shall be made in accordance with subparagraph (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 Part 9904, in effect on the date of award of this Contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. 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 Contract if the Contract cost is affected by a change which,

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pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor'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 subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.
  - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.
- (5) Agree to an adjustment of the Contract price or cost allowance, as appropriate, if the Contractor 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. Such adjustment shall provide for recovery of the increased costs to the United States, 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 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 Contractor 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) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR, Part 9904 or a CAS rule or regulation in 48 CFR, Part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
  - (c) The Contractor 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 Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's 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. 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 subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that 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.

**I.44. FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts 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 Contractor 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 to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards, 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 clause at FAR 52.230-2, Cost Accounting Standards, 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, or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):



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- (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 Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO 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 subdivision (a)(4)(i) of the clause at FAR 52.230-5, Cost Accounting Standards - Educational Institutions shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clause in this Contract entitled "Cost Accounting Standards or Cost Accounting Standards - Educational Institutions," 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 clause at FAR 52.230-2, Cost Accounting Standards and Cost Accounting Standards - Educational Institutions, 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 clause at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards - Educational Institutions 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 clause at FAR 52.230-2, Cost Accounting Standards, 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 from the date of failure to comply until the noncompliance is corrected.

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- (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 Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime 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 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 CAS clause at FAR 52.230-2 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 Contractor'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 Contractor making the award.
- (f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract 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 prime contract 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 subcontract signed Certificate of Current Cost or Pricing Data, whichever is earlier.

**I.45. FAR 52.232-17 INTEREST (JUN 1996)**

- (a) Except as otherwise provided in this Contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this Contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
  - (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
  - (3) The date the Government transmits to the Contractor proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
  - (4) If this Contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by Contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.46. FAR 52.232-24 PROHIBITION OF ASSIGNMENT OF CLAIMS (JAN 1986)**

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

**I.47. FAR 52.233-1 DISPUTES (DEC 1998) ALTERNATE I (DEC 1991)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

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- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
  
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
  
- (d)
  - (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
  
  - (2)
    - (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
  
    - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
  
    - (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
  
  - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
  
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

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- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**I.48. FAR 52.233-3 PROTEST AFTER AWARD (AUG 1996)(ALTERNATE 1) (JUN 1985)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. 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. Upon receipt of the final decision in the protest, the Contracting Officer shall either--
  - (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the "Termination" clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a

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combination thereof, and in any other terms of the contract that may be affected, 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 its right to an adjustment within 30 days after the end of the period of work stoppage, provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal 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 the convenience of the Government, the Contracting Officer 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 Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this Contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertifications, a protest related to this Contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I.49. FAR 52.236-8 OTHER CONTRACTS (APR 1984)**

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

**I.50. FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

- (a) The Contractor recognizes that the services under this Contract are vital to the Government and must be continued without interruption and that, upon Contract expiration or termination, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**I.51. FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)**

- (a) Notwithstanding any other clause of this contract--
  - (1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this Contract that have been determined not to be allowable under the Contract terms; and
  - (2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer with justification for allowance of the costs. If the Contractor does respond within 60 days, the

Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

- (b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

**I.52. FAR 52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**I.53. FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)**

- (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- (b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this Contract on a noncompetitive basis to its protégés.

**I.54. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1998)**

- (a) Definition.

"Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.



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- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
- (1) 52.222-26, Equal Opportunity (E.O. 11246);
  - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
  - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);  
and
  - (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**I.55. FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)**

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (a) If the Government is shown as the consignor or the consignees, the annotation shall be: "Transportation is for the \_\_\_\_\_ (name the specific agency) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."
- (b) If the Government is not shown as the consignor or the consignee, the annotation shall be: "Transportation is for the \_\_\_\_\_ (name the specific agency) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement Contract No. \_\_\_\_\_. This may be confirmed by contacting \_\_\_\_\_ (name and address of the contract administration office listed in the contract)."

**I.56. FAR 52.247-63 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (JAN 1997)**

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- (a) "International air transportation," as used in this clause, 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.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S. flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C., Chapter 411.

- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (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 of foreign flag air transportation, to disallow expenditures 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 statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF  
U.S. FLAG AIR CARRIERS

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 Section 47.403 of the Federal Acquisition Regulation): (State reasons):

(End of Statement)

- (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.

**I.57. FAR 52.247-64 PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG  
COMMERCIAL VESSELS (JUN 1997)**

- (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 provision 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 both
- (i) The Contracting Officer and
  - (ii) The:  
  
Office of Cargo Preference  
Maritime Administration (MAR-590),  
400 Seventh Street SW,  
Washington, DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

- (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:
    - (A) Sponsoring U.S. Government agency.
    - (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) Except for contracts at or below the simplified acquisition threshold, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.
- (e) The requirement in paragraph (a) does not apply to--
  - (1) Contracts at or below the simplified acquisition threshold;
  - (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 under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

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- (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: Office of Costs and Rates, Maritime Administration , 400 Seventh Street SW, Washington, DC 20590, Phone: 202-366-4610.

**I.58A. FAR 52.249-6 TERMINATION (COST REIMBURSEMENT) (SEP 1996) (AS modified by Dear 970.4905-1(b))**

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--
  - (1) The Contracting Officer determines that a termination is in the Government's interest; or
  
  - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance. (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
  
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
  - (1) Stop work as specified in the notice.
  
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), 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 the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case

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the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government--
    - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
    - (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 the Government; and
    - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Contracting Officer 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 the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

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- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. 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 Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
  - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
  - (2) 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 subparagraph (h)(1) of this clause.
  - (3) The reasonable costs of settlement of the work terminated, including--

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- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
- (4) A portion of the fee payable under the contract, determined as follows:
- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
  - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, as supplemented in Subpart 970.31 of the Department of Energy Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
  - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor--



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- (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
  - (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**I. 58B FAR 52.249-14 EXcusable delays (apr 1984)**

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are
- (1) acts of God or of the public enemy,
  - (2) acts of the Government in either its sovereign or contractual capacity,
  - (3) fires,
  - (4) floods,
  - (5) epidemics,
  - (6) quarantine restrictions,
  - (7) strikes,
  - (8) freight embargoes, and
  - (9) unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless --
- (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
  - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

**I.59. FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

**I.60. FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)**

The Contracting Officer may issue the Contractor an authorization to obtain Interagency Fleet Management System (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of IFMS and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39, and 41 CFR 101-38.301-1.

**I.61. FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)**

- (a) The use in this solicitation or Contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or Contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**I.62. FAR 52.253-1 COMPUTER-GENERATED FORMS (JAN 1991)**

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the FAR may be submitted on a computer-generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency-unique form prescribed by an agency supplement to the FAR may be submitted on a computer-generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

- (c) If the Contractor submits a computer-generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

**I.63. DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

**I.64. DEAR 952.204-2 SECURITY (SEP 1997) (Modified)**

(a) Responsibility. It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. (Modified) The Contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of the award of this modification.

(c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special

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nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 as amended by E.O. 12958 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356 as amended by E.O. 12958, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and EO 12356 as amended by E.O. 12958.)
- (j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

**I.65. RESERVED**

**I.66. DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)**

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

**I.67. DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)**

- (a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.
- (b) The provisions of this clause shall be included in any subcontracts.

**I.68. DEAR 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (Deviation) (Acquisition Letter 99-03)(APR 1999)**

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (b) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.
- (c) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the contractor to avoid or mitigate foreign influences.
- (d) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting

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officer shall provide in writing to safeguard any classified information or special nuclear material.

- (e) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.
- (f) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (h) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

**I.69. DEAR 952.204-75 Public Affairs (DEC 2000)**

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.



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- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (b) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.
- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (d) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.
- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

**I.70. DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)**

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

**I.71. DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)**

- (a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
  
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as “contractor”) in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor’s Work Product

- (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor’s performance of work under this Contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this Contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
  
- (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case, the restriction in this subparagraph shall not apply.
  
- (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

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- (i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer, it shall not:
    - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
    - (B) compete for the work for the Department based on such information for a period of six (6) months after either the completion of this Contract or until such information is released or otherwise made available to the public, whichever is first;
    - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
    - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
  - (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
  - (iii) The Contractor may use technical data it first produces under this Contract for its private purposes consistent with paragraphs (B)(2)(I) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of

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any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the Contract for convenience if it deems such termination to be in the best interest of the Government.

- (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this Contract for default.
  
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the Contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
  
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
  
- (f) Subcontracts.
  - (1) The contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms “contract,” “contractor,” and “Contracting Officer” shall be appropriately modified to preserve the Government’s rights.
  
  - (2) Prior to the award under this Contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the contractor. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

**I.72. DEAR 952.215-70 KEY PERSONNEL (DEC 2000)**

- (a) The personnel listed below or elsewhere in this contract [Appendix D] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the Contracting Officer reasonably in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**I.73. DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)**

- (a) Notwithstanding any other provisions of the Contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this Contract, the Contractor acquires or proposes to acquire use of real property by:
  - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.
  - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
  - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

**I.74. DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)**

Individual occupational radiation exposure records generated in the performance of work under this Contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

**I.75. DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)**

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

**I.76. DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) (DEVIATION)**

- (a) Definition. Eligible employee means a former or current employee of a contractor or subcontractor (1) who has been employed at a Department of Energy Defense Nuclear Facility as defined in Section 3163 of the National Defense Authorization Act for FY 1993 (Pub. L. 102-484) and the Interim Planning Guidance for Contractor Work Force Restructuring (DEC 1998) or other applicable Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time (hereinafter "Guidance"), (2) whose employment at such a Defense Nuclear Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination, (3) who has also met the job attachment test as set forth in applicable Departmental Guidance, and (4) who is qualified for a particular position

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with the Contractor or, with retraining, can become qualified within the time and cost limits set forth in the Departmental Guidance.

- (b) The Contractor will assess the skills needed for the work to be performed under this contract and will provide to DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which the Contractor has vacancies.
- (c) Consistent with the Department of Energy Guidance as supplemented by the appropriate site work force restructuring plan, the Contractor agrees that it will provide to the extent practicable a preference in hiring to an eligible employee as defined other than for managerial positions (defined as those above the first level of supervision) for work to be performed under this contract.
- (d) The Contractor will develop training programs designed to improve the qualifications of employees to fill vacancies with the Contractor and will take such training into account in assessing the qualifications of eligible employees.
- (e) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**I.77. DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)**

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term 'technical direction' is defined to include, without limitation:
  - (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
  - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.
- (b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

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- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
  - (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the contract clause entitled 'Changes;'
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the contractor's right to perform the terms and conditions of the contract.
  
- (d) All technical direction shall be issued in writing by the COR.
  
- (e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:
  - (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
  - (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
  - (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
  
- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled 'Disputes.'

**I.78. DEAR 952.247-70 FOREIGN TRAVEL (FEB 1997)**

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.



- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed Soviet-bloc travel.

**I.79. DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT  
(MODIFIED) (JUN 1996)**

- (a) *Authority.* This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) *Definitions.* The definitions set out in the Act shall apply to this clause.
- (c) *Financial Protection.* Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) *Indemnification.*
  - (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.
  - (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under this contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) Waiver of Defenses.

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- (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
  
- (2) In the event of an extraordinary nuclear occurrence which:
  - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
  
  - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
  
  - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the Contract activity; or
  
  - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
    - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to:
      - 1 Negligence;
  
      - 2 Contributory negligence;
  
      - 3 Assumption of risk; or
  
      - 4 Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
  
    - (B) Any issue or defense as to charitable or governmental immunity; and
  
    - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change

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and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

- (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
  - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:
- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
  - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
  - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
  - (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
  - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

- (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
  - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
  - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) *Notification and litigation of claims.* The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) *Continuity of DOE obligations.* The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or by the completion, termination or expiration of this contract.
- (h) *(MODIFIED) Effect of other clauses.* The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled "Contract Disputes," provided, however, that this clause shall be subject to the clauses entitled "Covenant Against Contingent Fees," to the portion of a clause of this Contract providing specifically for examination of records relating to this Contract by the Comptroller General, and to any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

- (i) *Civil penalties.* The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) *Criminal penalties.* Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) *Inclusion in subcontracts.* The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.

**I.80. DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (JUN 1995)**

Consistent with contract-authorized travel requirements, contractor employees shall make use of the travel discounts offered to Federal travelers, through use of contracted airlines discount air fares, hotels and motels bding rates and car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized contracting officer.

- (a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Property Regulation (FPR), 41 CFR part 301-15, Travel Management Programs. It stipulates that cost-reimbursable contractor employees may obtain discount airfares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under

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GTR's provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

- (b) Hotels/motels. Participating hotels and motels which extend discounts are listed in the FTD, which shows rates, facilities, and identifies by code those which offer reduced rates to cost-reimbursable contractor employees while traveling on official contract business.
- (c) Car rentals. The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms on to cost-reimbursable contractor employees while traveling on official contract business are listed in the FTD.
- (d) Procedures for obtaining service.
  - (1) Identification and method of payment requirements for participating Federal contracted airlines are listed in the FTR. Travel discount airfares may be ordered by the issuance of a GTR either directly to the contractor, or to a Schedule Airline Travel Office (SATO) or Federal Travel Management Center (FTMC), provided the letter of identification signed by the cognizant contracting officer accompanies the order. In appropriate instances, such as geographical proximity, contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when either a SATO or FTMC is available. Some airlines allow the purchase of discounted airfares with cash or credit card.
  - (2) In the case of hotel and motel accommodations, reservations may be made by the contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship.
  - (3) For car rentals, generally the same procedures as in (d)(2) above will be followed in arranging reservations and obtaining discounts.

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- (e) Standard letter of identification. Contractors shall prepare for the authorizing contracting officer a letter of identification based on the following format:

FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR  
TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL  
LETTERHEAD)

To: (Source of ticketing, accommodations or rental)

Subject: Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of (company name) which is under contract to this agency under the Government contract (contract number). During the period of the contract (give dates), the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer).

**I.81. RESERVED**

**I.82. RESERVED**

**I.83 DEAR 970.5203-1 -- Management Controls (DEC 2000)**

(a)(1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.

(3) Such systems shall be an integral part of the contractor's management functions,

including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

**I.84 DEAR 970.5203-2 -- Performance Improvement and Collaboration (DEC 2000)**

(a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.



(d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

**I.85 DEAR 970.5203-3 -- Contractor's Organization (DEC 2000)**

(a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

(b) Supervisory representative of contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.

(c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.

(d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

**I. 86 DEAR 970.5204-1 -- Counterintelligence (DEC 2000) (DEVIATION)**

(a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

(b) (DEVIATION) The Contractor shall comply with requirements established by the SR Counterintelligence Officer. The SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Contractor employees

traveling to foreign countries or interacting with foreign nationals. The Contractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Contractor employees who have traveled to foreign countries or interacted with foreign nationals. The contractor shall coordinate Counterintelligence Awareness training activities with the SR Counterintelligence Officer. The Contractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the SR Counterintelligence Officer; and provide assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

**I. 87 DEAR 970.5204-2 -- Laws, Regulations, and DOE Directives (DEC 2000)**

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."

(c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work

and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

(d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.

(e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

**I.88 DEAR 970.5204-3 -- Access to and Ownership of Records (DEC 2000)**

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

(2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

(f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

(g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

- (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
- (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
- (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

**I.89 DEAR 970.5208-1 -- Printing (DEC 2000)**

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and

Binding Regulations).

**I.90 DEAR 970.5215-1 -- Total Available Fee: Base Fee Amount and Performance Fee Amount (DEC 2000) Alternate IV (DEC 2000)**

(a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."

(b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.

(c) Determination of Total Available Fee Amount Earned. (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be , the Manager, Savannah River Operations Office, or designee. The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee.

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the

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contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.

(d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the contracting officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:

(i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty

calendar days prior to the end of the evaluation period.

(e) Schedule for total available fee amount earned determinations. The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and contracting officer agree. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the contracting officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (*41 U.S.C. 611*) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

(f) Contractor self-assessment. Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within (Insert Number) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

**I.91 DEAR 970.5215-2 -- Make-or-Buy Plan (DEC 2000)**

Definitions.

Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.



Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

(b) Make-or-buy plan. The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.

(c) Submission and approval. For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:

(1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:

(i) The contractor is not the least-cost performer, and

(ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

(3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) Conduct of operations. Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.

(e) Changes to the make-or-buy plan. The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the make-or-buy decisions change, or

(3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

**I.92 DEAR 970.5215-3 -- Conditional Payment of Fee, Profit, or Incentives (DEC 2000)  
Alternate I (DEC 2000)**

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause, and if Alternate I is

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applicable, (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

(a) Minimum requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the contracting officer. The minimum performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

(b) Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

(c) Minimum requirements for specified level of performance. (1) At a minimum the Contractor must perform the following:

(i) the requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;

(ii) all of the performance requirements directly related to requirements specifically incentivized at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) all other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the contracting officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(d) Minimum requirements for cost performance. (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the contracting officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

**I.93 DEAR 970.5215-4 -- Cost Reduction (DEC 2000)**

Note: The following clause is only applicable to Integrated Cost Reduction Proposals developed in accordance with the Special Contract Clause in Section H entitled, Integrated Cost Reduction Proposals.

(a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.

(b) Definitions. Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

- (1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or
- (2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) Procedure for submission of CRPs. (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

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(i) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.

(ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.

(iii) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:

(i) The proposed contractual arrangement and the justification for its use; and

(ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

(1) Pose a risk to the health and safety of workers, the community, or to the environment;

(2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

(5) Create a negative impact on the cost, schedule, or scope of work in another area;

(6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and

(7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.

(e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the

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Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

- (1) Result in net savings (in the sharing period if a design, process, or method change);
- (2) Not reappear as costs in subsequent periods; and
- (3) Not result in any impairment of essential functions.

(f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) Validation of Shared Net Savings. The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.

(j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

**I.94 DEAR 970.5222-1 -- Collective Bargaining Agreements-Management and Operating Contracts (DEC 2000)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

**I.95 DEAR 970.5222-2 -- Overtime Management (DEC 2000)**

- (a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.
- (c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:
  - (1) An overtime premium fund (maximum dollar amount);
  - (2) Specific controls for casual overtime for non-exempt employees;
  - (3) Specific parameters for allowability of exempt overtime;
  - (4) An evaluation of alternatives to the use of overtime; and
  - (5) Submission of a semi-annual report that includes for exempt and non-exempt employees:



- (i) Total cost of overtime;
- (ii) Total cost of straight time;
- (iii) Overtime cost as a percentage of straight-time cost;
- (iv) Total overtime hours;
- (v) Total straight-time hours; and
- (vi) Overtime hours as a percentage of straight-time hours.

**I.96 DEAR 970.5223-1 -- Integration of Environment, Safety, and Health Into Work Planning and Execution (DEC 2000)**

- (a) For the purposes of this clause,
  - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
  - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
  - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the

environment is a priority whenever activities are planned and performed.

- (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
- (1) Define the scope of work;
  - (2) Identify and analyze hazards associated with the work;
  - (3) Develop and implement hazard controls;
  - (4) Perform work within controls; and
  - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

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- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety

Management System for the contractor's review and approval.

**I.97 DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)**

- (a) In the performance of this contract, the Contractor shall comply with the requirements of Executive Order 13101 and the U.S. Department of Energy (DOE) Affirmative Procurement Program Guidance. This guidance includes requirements concerning environmentally preferable products and services, recycled content products and biobased products. This guidance is available on the Internet.
- (b) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its activities with the DOE Recycling Coordinator. Reports required by paragraph (c) of this clause shall be submitted through the DOE Recycling Coordinator.
- (c) The Contractor shall prepare and submit reports, at the end of the Federal fiscal year, on matters related to the acquisition of items designated in EPA's Comprehensive Procurement Guidelines that Federal agencies and their Contractors are to procure with recovered/recycled content.
- (d) If the Contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as this clause. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their Contractors are to procure with recycled content pursuant to 40 CFR 247. Examples of such a subcontract would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of this clause. Instead, the facility management contractor may include such quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available (i) competitively within a reasonable time, (ii) at a reasonable price, or, (iii) within the performance requirements. If reports are required of the subcontractor, such reports shall be submitted to the facility management contractor. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties

- (e) When this clause is used in a subcontract, the word "Contractor" will be understood to mean "subcontractor" and the term "DOE Recycling Coordinator" will be understood to mean "Contractor Recycling Coordinator."

**I.98 DEAR 970.5223-4 -- Workplace Substance Abuse Programs at DOE Sites (DEC 2000)**

- (a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts.
  - (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.
  - (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
  - (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

**I.99 DEAR 970.5226-1 -- Diversity Plan (DEC 2000)**

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix H. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer),

and (6) the prevention of profiling based on race or national origin.

**I.100 DEAR 970.5226-2 – Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)**

(a) Consistent with the objectives of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, *42 U.S.C. 7274h*, in instances where the Department of Energy has determined that a change in workforce at a Department of Energy Defense Nuclear Facility is necessary, the contractor agrees to (1) comply with the Department of Energy Workforce Restructuring Plan for the facility, if applicable, and (2) use its best efforts to accomplish workforce restructuring or displacement so as to mitigate social and economic impacts.

(b) The requirements of this clause shall be included in subcontracts at any tier (except subcontracts for commercial items pursuant to *41 U.S.C. 403*) expected to exceed \$500,000.

**I.101 DEAR 970.5226-3 -- Community Commitment (DEC 2000)**

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

**I.102 DEAR 970.5227-2 -- Rights in Data-Technology Transfer (DEC 2000)**

(a) Definitions. (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (h) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights. (1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct

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during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause ("Rights in Limited Rights Data") or paragraph (h) of this clause ("Rights in Restricted Computer Software"); and (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General). (1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor



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and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles). (1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of *17 U.S.C. 401* or *402* and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this Contract and submitted for journal publication or similar means of dissemination with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This manuscript has been authored by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this manuscript, or allow others to do so, for United States Government purposes.

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles and data produced under

a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) For data other than scientific and technical articles and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (B) The program under which it was funded, (C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement, (D) Whether the data is subject to export control, (E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and (F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness, (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under

export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the contracting officer.

(2) DOE Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish to the DOE designated, centralized software distribution and control point, the Energy Science and Technology Software Center, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) An abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(ii) Unless otherwise directed by the contracting officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from

the copyright holder.

(iii) For a five year period or such other specified period as specifically approved by Patent Counsel beginning on the date the Contractor is given permission to assert copyright in data, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. Upon request, the initial period may be extended after DOE approval. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the period approved by Patent Counsel for application of the limited Government license described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(v) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of *17 U.S.C. 401* or *402* on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows: Notice: These data were produced by (insert name of Contractor) under Contract No.----- with the Department of Energy. For (period approved by DOE Patent Counsel) from (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. There is provision for the possible extension of the term of this license. Subsequent to that period or any extension granted, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the five (5) year or specified longer period approved by Patent Counsel as provided for in paragraph (e) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65- "Appeals."

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(viii) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(4) The following notice may be placed on computer software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. **NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE.** This notice including this sentence must appear on any copies of this computer software.

(End of Notice)

(5) a similar notice can be used for data, other than computer software, upon approval of DOE Patent Counsel.

(f) Subcontracting. (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(g) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when

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furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No.----- with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(h) Rights in Restricted Computer Software. (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used

in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No.---. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer



software, the following short-form Notice may be used in lieu thereof:

**Restricted Rights Notice-Short Form**

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No.--- with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of *17 U.S.C. 401*, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(i) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

**I.103 DEAR 970.5227-3 -- Technology Transfer Mission (AUG 2002)**

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) Authority. (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer, including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (*15 U.S.C. 3710a*); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of Pub. L. 103-160, and of Chapter 38 of the Patent Laws (*35 U.S.C. 200 et seq.*); Section 152 of

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the Atomic Energy Act of 1954, as amended (*42 U.S.C. 2182*); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (*42 U.S.C. 5908*); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) Definitions. (1) Contractor's Laboratory Director means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) Intellectual Property means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) Cooperative Research and Development Agreement (CRADA) means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) Joint Work Statement (JWS) means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) Assignment means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) Laboratory Biological Materials means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) Laboratory Tangible Research Product means tangible material results of research which

(i) are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

(ii) are not materials generally commercially available; and

(iii) were made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(8) Bailment means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials or Laboratory Tangible Research Product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) Allowable Costs. (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (*15 U.S.C. 3710*). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year

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shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the contracting officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Insurance-Litigation and Claims" of this contract.

(d) Conflicts of Interest-Technology Transfer. The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology transfer activities. These procedures shall apply to other persons participating in Laboratory research or related technology transfer activities. Such implementing procedures shall be provided to the contracting officer for review and approval within sixty (60) days after execution of this contract. The contracting officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the contracting officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the contracting officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the contracting officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any individual who has been a Laboratory employee within the previous two years or to the company in which the individual is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

(e) Fairness of Opportunity. In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor.

(f) U.S. Industrial Competitiveness. (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under this contract:

(i) whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) in licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1)(i) or (ii) of

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this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the contracting officer. The contracting officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of *35 U.S.C. 204* (Preference for United States industry).

(g) Indemnity-Product Liability. In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the contracting officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) Disposition of Income. (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (*15 U.S.C. 3710a(b)(5)*) and Chapter 38 of the Patent Laws (*35 U.S.C. 200 et seq.*) as amended through the effective date of this contract award or modification. If the net amounts of such royalties and income received from patent licensing after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be Subject Inventions under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

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(3) The Contractor shall establish subject to the approval of the contracting officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the contracting officer.

(i) Transfer to Successor Contractor. In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the contracting officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the contracting officer.

(j) Technology Transfer Affecting the National Security. (1) The Contractor shall notify and obtain the approval of the contracting officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (*42 U.S.C. 2168*). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) Records. The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the contracting officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (*15*

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*U.S.C. 3710a(c)(6)*). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) Reports to Congress. To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the contracting officer on or before October 1st of each year.

(m) Oversight and Appraisal. The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the contracting officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) Technology Transfer Through Cooperative Research and Development Agreements. Upon approval of the contracting officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director, or designee, may enter into CRADAs on behalf of the DOE subject to the requirements set forth in this paragraph.

(1) Review and Approval of CRADAs. (i) Except as otherwise directed in writing by the contracting officer, each JWS shall be submitted to the contracting officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the contracting officer in the approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within thirty (30) days after submission of a JWS or proposed CRADA, the contracting officer shall approve, disapprove or request modification to the JWS or CRADA. The contracting officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS or proposed CRADA.

(iv) Except as otherwise directed in writing by the contracting officer, the Contractor shall



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not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the contracting officer. The Contractor may submit its proposed CRADA to the contracting officer at the time of submitting its proposed JWS or any time thereafter.

(2) Selection of Participants. The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) Withholding of Data. (i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (*15 U.S.C. 3710a(c)(7)*) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the contracting officer in advance for a specific CRADA, the Contractor agrees, at the request of the contracting officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a

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CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) Work For Others and User Facility Programs. (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees form prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U.S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the contracting officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) Conflicts of Interest. (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee-

(1) holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning

prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the contracting officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the contracting officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the contracting officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) Technology Transfer in Other Cost-Sharing Agreements. In conducting research and development activities in cost-shared agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the contracting officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(p) Technology Partnership Ombudsman.

(1) The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the contractor with respect to technology partnerships (including CRADAs), patents owned by the contractor for inventions made at the laboratory, and technology licensing.

(2) The Ombudsman shall be a senior official of the Contractor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

(3) The duties of the Technology Partnership Ombudsman shall include:

(i) Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

(ii) Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

(iii) Submitting a quarterly report, in a format provided by DOE, to the Secretary of Energy, the Administrator for Nuclear Security, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their resolution, consistent with

the protection of confidential and sensitive information.

**I.104 DEAR 970.5227-4 -- Authorization and Consent (AUG 2002)**

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c)(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

**I.105 DEAR 970.5227-5 -- Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)**

(a) The Contractor shall report to the Contracting Officer 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) If any person files a claim or suit against 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 hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$100,000.

**I.106 DEAR 970.5227-6 -- Patent Indemnity-Subcontracts (DEC 2000)**

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

**I.107 DEAR 970.5227-8 -- Refund of Royalties (AUG 2002)**

(a) During performance of this Contract, if any royalties are proposed to be charged to the Government as costs under this Contract, the Contractor agrees to submit for approval of the Contracting Officer, prior to the execution of any license, the following information relating to each separate item of royalty:

- (1) Name and address of licensor;
- (2) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (3) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
- (4) Percentage or dollar rate of royalty per unit;
- (5) Unit price of contract item;
- (6) Number of units;
- (7) Total dollar amount of royalties; and
- (8) A copy of the proposed license agreement.

(b) If specifically requested by the Contracting Officer, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Contracting Officer, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Contracting Officer. If the Contracting Officer determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Contracting Officer.

(f) Regardless of prior DOE approval of any individual payments or royalties, DOE may

contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Contracting Officer of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

**I.108 DEAR 970.5227-12 -- Patent Rights-Management and Operating Contracts, For-Profit Contractor, Advance Class Waiver ALTERNATE I(AUG 2002)**

(a) Definitions. (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.

(3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under *35 U.S.C. 202(a)(ii)*, and in accordance with *37 CFR 401.3(e)*.

(4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (*7 U.S.C. 2321*, et seq.).

(5) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(6) Patent Counsel means DOE Patent Counsel assisting the contracting activity.

(7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety

Protection Act, 7 *U.S.C. 2401*(d)) shall also occur during the period of contract performance.

(9) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) Allocation of Principal Rights. (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class waiver are subject to 35 *U.S.C. 203* and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 *U.S.C. 203* and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional

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circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) uranium enrichment technology;

(B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (*42 U.S.C. 2168*).

(ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

(6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Appendix [ Insert Reference ], to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel



with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to *35 U.S.C. 203* and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) Government assignment of rights in Government employees' subject inventions. If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee.

(10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(c) Subject Invention Disclosure, Election of Title, and Filing of Patent Application by Contractor. (1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

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- (i) the contract number under which the subject invention was made;
- (ii) the inventor(s) of the subject invention;
- (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
- (iv) the date and identification of any publication, on sale or public use of the invention;
- (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
- (vi) a statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
- (vii) all sources of funding by Budget and Resources (B&R) code; and
- (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Work-for-Others agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of *42 U.S.C. 5908*.

(2) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including

the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under *35 U.S.C. 102(b)*, the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.

(4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under *35 U.S.C. 102(b)*, whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

- (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
- (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
- (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

(7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to *35 U.S.C. 205* and *37 CFR Part 40*.

(d) Conditions When the Government May Obtain Title Notwithstanding an Advance Class Waiver. (1) Return of title to a subject invention. If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) Failure to disclose or elect to retain title. Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.

(3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

(4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) Termination of advance class waiver. DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) Minimum Rights of the Contractor. (1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to

do so at the time the contract was awarded.

(2) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR Part 404 and DOE licensing regulations.

(f) Contractor Action to Protect the Government's Interest. (1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;

(ii) convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or

(iii) enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made

under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

(5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(6) Avoidance of Royalty Charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) DOE approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.

(8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention

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if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) Subcontracts. (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with *35 U.S.C. 202* and subparagraph (b)(5) of this clause.

(3) Inclusion of patent rights clause-subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.

(4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

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(6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.

(h) Reporting on Utilization of Subject Inventions. Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.

(i) Preference for United States Industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-In Rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that-



(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) Reports. (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of

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the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) Atomic Energy. (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) Classified Inventions. (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) Examination of Records Relating to Inventions. (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause,

including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) Educational Awards Subject to *35 U.S.C. 212*. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to *35 U.S.C. 212* in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(u) Termination of Contractor's Advance Class Waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or

in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

**I.109 DEAR 970.5228-1 -- INSURANCE - LITIGATION AND CLAIMS (MAR 2002)**

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the

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unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled "Obligation of Funds."

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-

(1) Willful misconduct,

(2) Lack of good faith, or

(3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(i) The burden of proof shall be upon the contractor to establish that costs covered by

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paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.

(j)(1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.

(4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.

**I.110 DEAR 970.5229-1 -- State and Local Taxes (DEC 2000)**

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

**I.111 DEAR 970.5231-4 -- Preexisting Conditions - Alternate I (DEC 2000)**

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before October 1, 1996, in conjunction with the management and operation of the Savannah River Site shall be deemed

incurred under Contract No. DE-AC09-89SR18035.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

**I.112 DEAR 970.5232-1 -- Reduction or Suspension of Advance, Partial, or Progress Payments (DEC 2000)**

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

**I.113 DEAR 970.5232-2 -- Payments and Advances (DEC 2000)- Alternate II (DEC 2000)- Alternate III (DEC 2000)**

(a) Payment of Total available fee: Base Fee and Performance Fee. The base fee amount, if any, is payable in equal monthly installments. Total available fee amount earned is payable following the Government's Determination of Total Available Fee Amount Earned in accordance with the clause of this contract entitled "Total Available Fee: Base Fee Amount and Performance Fee Amount." Base fee amount and total available fee amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base fee amount or total available fee amount earned payment may be withdrawn against the payments cleared financing arrangement without the prior written approval of the contracting officer.

(b) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) Special financial institution account-use. All advances of Government funds shall be



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withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix B. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

(e) Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the contractor with DOE's patent clearance requirements, and

(2) The furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

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(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause--, DEAR 970.5228-1, "Insurance-Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the contractor under this clause, there shall be deducted,

(i) Any claim which the Government may have against the contractor in connection with this contract, and

(ii) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

(g) Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

(h) Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with

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those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

(i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

(j) Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal Acquisition Regulation subpart 31.2 and the Department of Energy Acquisition Regulation subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

(j) Review and approval of costs incurred. The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (*41 U.S.C. 256*), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

**I.114 DEAR 970.5232-3 -- Accounts, Records, and Inspection (DEC 2000) Alternate II (DEC 2000).**

(a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause--, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of

this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

(c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.88, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the contractor or subcontractor to

create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

(i) Internal audit. The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer. The contractor shall include this paragraph (i) in all cost-reimbursement subcontracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years, and any other cost-reimbursement subcontract determined by the Head of the Contracting Activity.

**I.115 DEAR 970.5232-4 -- Obligation of Funds (DEC 2000)**

(a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is (See Schedule, Section B). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this

contract, and

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) Notices-Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the 45 day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 90 days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

(d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

(e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

**I.116 DEAR 970.5232-5 -- Liability With Respect to Cost Accounting Standards (DEC 2000)**

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

**I.117 DEAR 970.5232-6 -- Work for Others Funding Authorization (DEC 2000)**

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor for the contractor's uncollected receivables. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

**I.118 DEAR 970.5232-7 -- Financial Management System (DEC 2000)**

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate,

reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

**I.119 DEAR 970.5232-8 -- Integrated Accounting (DEC 2000)**

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

**I.120 DEAR 970.5235-1 -- Federally Funded Research and Development Center Sponsoring Agreement (DEC 2000)**

(a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy and the contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).

(b) In the operation of this FFRDC, the contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.

(c) Unless otherwise provided by the contract, the contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version).

(d) As an FFRDC, the contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted



activities is contained in DOE Order 481.1.

**I.121 DEAR 970.5236-1 -- Government Facility Subcontract Approval (DEC 2000)**

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

**I.122 DEAR 970.5237-2 -- Facilities Management (DEC 2000)**

Copies of DOE Directives referenced herein are available from the contracting officer.

(a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) of this clause. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) Energy management. The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance

with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

(d) Subcontract Requirements. To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

**I.123 DEAR 970.5242-1 -- Penalties for Unallowable Costs (DEC 2000)**

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the contracting officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the contracting officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor,

(i) was subject to a contracting officer's final decision and not appealed;

(ii) the Department's Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) was mutually agreed to be unallowable.

(d) If the contracting officer determines that a cost submitted by the contractor in its submission for settlement of cost incurred is:

(1) expressly unallowable, then the contracting officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of

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repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97); or

(2) determined unallowable, then the contracting officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The contracting officer may waive the penalty provisions when

(1) the contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) the amount of the unallowable costs allocated to covered contracts is \$10,000 or less;  
or

(3) the contractor demonstrates to the contracting officer's satisfaction that:

(i) it has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and

(ii) the unallowable costs subject to the penalty were inadvertently incorporated into the submission.

**I.124 DEAR 970.5243-1 -- Changes (DEC 2000)**

(a) Changes and adjustment of fee. The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) Work to continue. Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

**I.125 DEAR 970.5244-1 -- Contractor Purchasing System (DEC 2000)**

(a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) of this clause.

(b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.

(c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.

(d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) Audit of Subcontractors. (1) The contractor shall provide for:

- (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
- (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 970.3102-3-21(b).

(f) Bonds and Insurance. (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of

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nonavailability for individual items valued at \$100,000 or less.

(h) Construction and Architect-Engineer Subcontracts. (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest. (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) Contractor-Subcontractor Relationship. The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement

Executive.

(m) Leasing of Motor Vehicles. Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.

(n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the "Make-or-Buy Plan" clause of this contract and the contractor's approved make-or-buy plan.

(o) Management, Acquisition and Use of Information Resources. Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) Priorities, Allocations and Allotments. Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) Purchase of Special Items. Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:

- (1) Motor vehicles-48 CFR 908.7101
- (2) Aircraft-48 CFR 908.7102
- (3) Security Cabinets-48 CFR 908.7106
- (4) Alcohol-48 CFR 908.7107
- (5) Helium-48 CFR 908.7108
- (6) Fuels and packaged petroleum products-48 CFR 908.7109
- (7) Coal-48 CFR 908.7110
- (8) Arms and Ammunition-48 CFR 908.7111
- (9) Heavy Water-48 CFR 908.7121(a)
- (10) Precious Metals-48 CFR 908.7121(b)
- (11) Lithium-48 CFR 908.7121(c)

(12) Products and services of the blind and severely handicapped-41 CFR 101-26.701

(13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702

(r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:

(1) at time of original acquisition;

(2) when lease renewals are being considered; and

(3) at other times as circumstances warrant.

(s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.

(v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) Subcontract Flowdown Requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:



- (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

**I.126 DEAR 970.5245-1 -- Property (DEC 2000)**

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- (c) Identification. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.
- (d) Disposition. The contractor shall make such disposition of Government property which

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has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

(e) Protection of government property-management of high-risk property and classified materials. (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.

(2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property. (1)(i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

(B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or

(C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.

(2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:

(1) Shall immediately inform the contracting officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) Government property for Government use only. Government property shall be used only for the performance of this contract.

(i) Property Management. (1) Property Management System. (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the contractor's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.

(iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.

(ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

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- (1) All or substantially all of the contractor's business; or
  - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
  - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
  - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
  - (5) A separate and discrete major task or operation in connection with the performance of this contract.
- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

**PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**SECTION J**

**LIST OF ATTACHMENTS**

**PART III**

**SECTION J**

**LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**

**LIST OF ATTACHMENTS**

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PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J – LIST OF ATTACHMENTS

**APPENDIX A –**  
**PERSONNEL APPENDIX**

This advance understanding sets forth policies and associated expenses related to Contractor employee practices, relocation expenses, and other costs which have been agreed to by the parties as being reasonable and reimbursable when incurred in the performance of the contract work. Only those items of costs that are set forth herein or specifically referenced in this advance understanding are allowable by reason of advance understanding under this Contract. The failure to include any cost herein shall raise no presumption or inference as to the allowability or non-allowability of such cost.

DOE Order 350.1, "Human Resources Management Program," shall serve as the governing document for this advance understanding.

The contract terms prior to this modification required the Contractor to obtain DOE approval of certain changes/transactions affecting its Contractor's Procedures Manual 5B (paragraph A below) and its Other Benefit Plans (paragraph G below). Costs associated with any change not approved by DOE as required by the previous contract terms are not covered by this Advance Agreement and there shall be no presumption or inference as to the allowability or non-allowability of any cost associated with any such unapproved change.

A. Contractor Employee Practices

The Contractor shall implement local policies to ensure cost effective administration of its personnel programs in accordance with the terms of this contract. After the effective date of this modification any major program design change to the Contractor's Procedures Manual 5B, dated 05/06/96, as modified, requires Contracting Officer's approval prior to implementation. In case of conflict between the provisions of this Appendix and the Personnel Manual 5B, this Appendix shall take precedence.

B. Contractor Employee Compensation

The Contractor shall implement its employee compensation program in accordance with its policies and practices as approved by the Contracting Officer. The following specifics shall apply:

1. Compensation Program



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The Contractor shall submit its Compensation Program to the Contracting Officer for initial approval and periodic review:

- a. Initial design of its Compensation Program must be supported by relevant data comparing the Contractor's Compensation Program with other DOE approved industry benchmark programs. The Contractor Program shall include the following components:
  - (1) Philosophy and strategy for all pay delivery programs;
  - (2) System for establishing a job worth hierarchy;
  - (3) Method for relating internal job worth hierarchy to external market;
  - (4) System which links individual and/or group performance to compensation decisions;
  - (5) Method for planning and monitoring the expenditure of funds;
  - (6) Method for assuring compliance with applicable laws and regulations;
  - (7) System for communicating the programs to employees; and
  - (8) System for internal controls and self-assessment.
- b. Any proposed major Compensation Program design changes must be submitted to DOE for approval prior to implementation.

2. Compensation Increase Plan

The Contractor shall submit to DOE for approval prior to implementation an annual Compensation Increase Plan (CIP) with proposed Salary Ranges.

- a. The CIP should include the following components and data:
  - (1) Comparison of average pay to market average pay;
  - (2) Information regarding surveys used for comparison;
  - (3) Aging factors used for escalating survey data and supporting information;

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- (4) Projection of escalation in the market and supporting information;
- (5) Information to support special adjustments;
- (6) Analysis to support special adjustments; and
- (7) A discussion of the impact and budget and business constraints on the CIP amount; and
- (8) Comparison of pay to relevant factors other than market average pay
- (9) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement;
  - (a) The proposed plan totals shall be expressed as a percentage of payroll for the end of the previous plan year;
  - (b) All pay actions granted under the CIP are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before the year end;
  - (c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the Contractor and the Contracting Officer;
  - (d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors which significantly affect the plan amount;
- (10) The Contractor shall submit an annual Compensation Increase Plan Expenditure Report, DOE F 3220.8, to include, at a minimum, breakouts for merit, promotion, variable pay, special adjustments, and structure

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movements for each pay structure showing actual against approved amounts.

3. Individual Compensation Actions

Contracting Officer approval is required prior to reimbursement for initial and proposed changes to base salary for the top official, the deputy top official and only those direct reports to the top official as designated by the Contracting Officer (i.e., the key personnel identified in Appendix D). The Contractor shall provide supporting justification related to internal and external equity as well as individual performance. For each initial compensation or change, the Contractor shall submit the Compensation Approval form, DOE F 3220.5 sufficiently in advance of the proposed effective date of the action. No DOE funds shall be used for an action prior to Contracting Officer approval.

Also, the Contractor shall provide to DOE the semi-annual total earnings report which includes;

- (a) subtotal dollar amounts of base salary and other pay separately for exempt and nonexempt employees, indicating number of exempt employees and number of nonexempt employees, and
  - (b) individual compensation by employee name, position and amount (base salary and other pay separately) for each direct report to the top official and individual compensation at \$100,000 and above.
4. Incentive Compensation - The parties agree that no incentive compensation shall be charged to the contract pending agreement on an incentive compensation program which satisfies the requirements of DOE Order 350.1.
5. Exempt Overtime Eligibility - The following provisions apply to exempt overtime eligibility:
- a. All employees in grade 36 and above will be excluded from any overtime benefits.
  - b. Casual overtime worked by exempt employees will not be compensable.
  - c. Eligible employees:
    - (1). All employees working in the capacity of first line supervisor.
    - (2) All employees performing shift work

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- (3) All employees approved for extended work schedules.
- (4) Rate of overtime pay:
  - (i). Time and one-half may be paid to employees identified in paragraph 1 and 2 above.
  - (ii) Straight time may be paid to employees identified in paragraph 3 above.

C. Outbound Relocation Expenses

- 1. Relocation Expenses- Relocation expenses will be allowable subject to the provisions, limitations and exclusions of FAR 31.205-35.
- 2. Outbound relocation expenses of key personnel, as listed in the Contract, (and their replacements, if any) and families will be allowed under the following circumstances.
  - a. Termination or expiration of the contract and a job of like status and pay is not offered with the successor contractor.
  - b. Termination of the employee through no fault of the employee (e. g., reduction in force, completion of the work for which the employee was hired, agreement between Contractor and DOE that replacement would be appropriate) and the employee cannot be employed at the SRS or by the parent Company in a job of like status and pay.
- 3. In the event of the death of an employee who was eligible for outbound relocation expenses under Section C2. above, the employee's beneficiary will be allowed:
  - a. The transportation expenses of returning the employee's remains by air to the employee's former address or a location of equal distance.
  - b. Hearse service to and from the airport, not to exceed one hundred dollars (\$100.00).
  - c. Outbound travel and moving expenses for the employee's family.
- 4. In the event an employee, other than a key personnel covered in C2 above, is involuntarily terminated through no fault of his or her own (e.g., down sizing, reduction in force, etc.) from the employment of the Contractor within one (1) year of the date of relocation, the cost of return movement of the employee, the employee's family, and household goods and effects to the point of hire or

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equivalent distance may be allowed for such employee as falling within the scope of this policy. The employee must sign a statement that the return moving costs are not being reimbursed by another employer.

Return moving expenses will be paid in the amount actually incurred to the original location or to another location of equal or less distance, In the event an employee moves to a point of greater distance, an allowance may be made, but will not exceed the cost of returning the employee and family to their original location. Such return travel must be completed within six (6) months following completion of the employment unless an extension is explicitly granted by the Human Resources Manager.

D. Service Credit

1. Previous Du Pont employees who were re-employed by the Contractor or Bechtel Savannah River, Inc. with no break in service and who received severance pay at contract termination of the Du Pont contract, will receive full service credit for all benefits except severance pay.
2. Previous Du Pont employees who retired and were rehired by the Contractor or Bechtel Savannah River, Inc. will not receive service credit for service prior to their retirement date with Du Pont.
3. Previous WSRI and BSRI employees who retired and are rehired under this contract will not receive service credit for prior WSRC or BSRI prior service unless his/her pension payments are suspended during the time of re-employment.
4. Employees of the Contractor or Bechtel Savannah River, Inc. who are re-employed under this contract with no break in service will receive full continuous service credit for all benefits earned and service accrued.
5. Employees transferring to any member of the performing entity from WGI, BNI BWXT or BNFL, or their subsidiaries and/or affiliates will receive service credit based upon the service credit granted with their prior employer.
6. Prior service credits will be automatically restored to a former employee of any of the affiliates of those parties referenced in paragraph a. of the Section H clause entitled, Recognition of Performing Entity who has lost prior service credits and is re-employed unless the employee is covered under paragraphs 2 or 3 above.

E. Severance Pay

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1. All non-temporary employees of WSRC, BSRI, BWXTSRC and BNFLSRC employees (except construction craft rate employees) whose services are no longer required under this contract due to reduction in workforce, shall receive severance pay based upon total service credit earned with the corporation, up to a maximum of 26 weeks.
2. Separation pay benefits are not payable when an employee is employed by or receives an offer of employment with a Government contractor performing the same or substantially the same statement of work contained in this contract, in whole or part, where continuation of employment with credit for prior length of service is preserved under substantially equal conditions of employment.
3. No employee (1) who accepts transfer to another facility, subsidiary or affiliate of the Contractor, (2) who is offered employment at comparable pay and benefits by any contractor or subcontractor performing the same or substantially the same statement of work contained in this contract, in whole or part, (3) who resigns, (4) who is discharged for cause, or (5) who retires normally or under the early retirement provisions of a pension or retirement plan of the Contractor shall be eligible for severance pay under this contract.
4. Costs of severance pay paid by the Contractor to foreign nationals employed by the Contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation are unallowable cost.
5. A former SRS employee or former Contractor employee who has received severance pay funded by the federal government and is subsequently rehired will, for purposes of this section, be considered a new employee with severance pay credit computed only from the most recent date of hire. However, should the interval between the date the employee was separated due to reduction-in-force and the date of rehire be less than the number of weeks for which the employee received severance pay, the employee shall be required to refund to the Contractor the amount that the severance pay exceeded the amount the employee would have received had he/she remained on the payroll for the period of his/her separation from employment. The time equivalent to the amount of severance pay refunded will be credited to the employees future severance pay allowance.
6. For former Du Pont employees who received severance payment in connection with Du Pont's termination of contract activities on March 31, 1989, future

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severance pay benefits shall be limited to those earned after September 30, 1985.

7. An employee terminated for lack of work while on personal leave of absence with pay or while on leave of absence from 4 to 6 months active military service is eligible for severance pay.

F. Pension and Defined Contribution Plan

1. Reporting Requirements and Plan Design

The Contractor shall submit to DOE copies of the annual actuarial valuation, accounting report, and IRS Form 5500 tax package concerning the plan and IRS forms in the 5300 series. All accounting for DOE funds shall be at market value on an accrual basis. All modifications to the site defined benefit plans or the site defined contribution plans that materially increase costs to DOE require Contracting Officer approval. The Contractor shall contribute no more than a combined total of 3 percent of employee's earning to the Saving and Investment Plan.

2. Funding

- a. The normal costs, actuarial liabilities, and the required Contractor contributions will be computed on the basis of any individual actuarial cost method which is acceptable to the IRS and paid by DOE.
- b. All contributions to the retirement fund shall equal the total amount currently attributable to participants in the plan. These contributions will be based on the actuarial valuation for the most recent plan year. The Contractor shall submit to the Contracting Officer the annual benefit and administrative costs of such plan.
- c. The Contractor shall credit to DOE all funds not allocable to vested contract service of participants in a defined contribution plan. Thus, the Contractor shall refund nonvested DOE contributions for those employees who withdraw from the plan and all DOE contributions paid toward periods beginning on and after the contract termination date. For periods beginning before contract termination, the Contractor may use such refunds to reduce future DOE contributions.
- d. WSRC will credit service at affiliates of the Contractor or those parties referenced in paragraph a. of the clause in Section H entitled, Recognition of Performing Entity, as service at WSRC, except that for

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purposes of the WSRC Pension Plan, such service for the Partners or their subsidiaries shall be considered WSRC service only for the purpose of establishing eligibility for pension plan benefits and vesting as specified in the WSRC Pension Plan. Pension amounts calculated under the WSRC Pension Plan shall be based on salary levels in effect at the time of retirement, regardless of whether the employee is then employed at WSRC, or affiliates of the Contractor or those parties referenced in paragraph a. of the clause in Section H entitled, Recognition of Performing Entity, but shall be based only on services accrued while employed at SRS. Specific procedures to reflect adjustments between pension benefits accruing from salary and service time under the Contract and salary and service time from affiliates of Contractor or those parties referenced in paragraph a. of the clause in Section H entitled, Recognition of Performing Entity shall be as mutually agreed by the parties.

There shall be no transfers of money with respect to any benefit plans when employees from the affiliates of the Contractor or those parties referenced in paragraph a. of the clause in Section H entitled, Recognition of Performing Entity or when employees of the Contractor or those parties referenced in paragraph a. of the clause in Section H entitled, Recognition of Performing Entity transfer to one of the affiliates of the Contractor or those parties referenced in paragraph a. of the clause in Section H entitled, Recognition of Performing Entity.

3. Contract Transition: Defined-Benefit Plans

- a. *Assumption of Contract.* The Contractor hereby states its willingness to assume all assets and all liabilities of defined benefit plans currently in place for contract employees. However, in no event shall the Contractor provide vesting or benefit credit for service upon which a benefit in pay status is based.
- b. *Terminating or Expiration of Contract.* Depending upon the situation, the following procedure shall separately apply to each defined-benefit plan:
  - (1) *No Replacement Contractor.* In the event the contract expires or is terminated without a replacement Contractor, all employee-accrued benefits are to become 100 percent vested immediately irrespective of the plan's vesting schedule. All employees would receive assets equal to the value of their vested portion consistent with Section 4044 of Employee



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Retirement income Security Act (ERISA) of 1974. DOE will fully fund the plan for these costs.

- (2) *Replacement Contractor Situation.* When there is a replacement Contractor, the Contractor shall assist in the necessary arrangements for the replacement Contractor to take over the Contractor pension plan and/or plan assets and liabilities for switched-over employees. For employees transferred to the replacement Contractor, the Contractor shall assist the DOE in preserving their pension service time under the contract by carrying forward their Contractor service time to the replacement Contractor. Granting of prior Contractor service credit by the replacement Contractor shall not result in duplicate benefits for the same service time.
- c. *Methodology for Calculations at Contract Assumption, - Termination or Expiration.* The following procedures shall be followed upon termination of the contract:
- (1) *Assets.* Assets shall include all accumulations of DOE reimbursed contributions and all DOE contract employees accumulations as determined in the actuarial valuation report through the date of contract plan assumption or termination. The value of such assets shall be their market value on an accrual basis.
  - (2) *Liabilities for Present and Future Benefits.* The Contractor actuary shall determine liabilities for employee accrued plan benefits as of the contract termination date. Except for active participants retained by the Contractor and those switched over to replacement Contractor, liabilities may be determined by purchase, through competitive bidding, of nonparticipating annuities.
    - (a) *Nonactive Participants.* For those who retired, terminated, vested, or became beneficiaries before contract termination, present value of accrued benefits shall be calculated by using the then PBGC rates of interest and mortality for immediate annuities or deferred annuities, as appropriate, issued to participants of terminating defined-benefit plans.

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- (b) *Active participants Retained by the Contractor.* For active employees who are retained by the Contractor, present value of the projected benefits shall be calculated using unit credit funding methods, service and salary history as of termination date, and the then PBGC rates for interest, mortality, and retirement. If such employee subsequently terminates within two years after contract termination, the value of the unvested portion shall revert to DOE. The salary increase assumption shall be reasonable and subject to DOE approval.
- (c) *Active Participants Transferred to Replacement Contractor.* No determination of accrued liabilities by the Contractor is required.
- (d) *Active Participants Terminated at Contract Termination or Expiration.* For active employees who are not retained by the Contractor and who are not switched over to the replacement Contractor, present value of vested accrued benefits shall be calculated using unit credit funding method and the PBGC interest and mortality rates for immediate annuities payable to participants of terminating defined-benefit plans.

d. *Financial Settlements*

- (1) *Reconciliation of Funding Obligations.* Full and final settlement shall be made, with the only exception being the return to DOE of subsequent nonvested DOE funds at employees termination as described in paragraph c.(2)(b) above. Assets from subparagraphs c.(1) above shall be compared with liabilities as calculated in subparagraphs c.(2)(a), c.(2)(b), and c.(2)(d).

- (a) If said assets are less than said liabilities, payments will be deposited into the pension plan of the terminated or expired Contractor. However, DOE retains the right, upon fund termination or transfer, to settle fund deficits in accordance with applicable contract provisions, subject to the availability of funds. Should no contract funds be available, DOE will provide sufficient other funds to accomplish this purpose.

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(b) If said assets exceed said liabilities, then the Contractor shall pay such difference into the replacement Contractor pension plan for ongoing employees. However, if there is no replacement Contractor, then the Contractor shall refund such difference to DOE. All payments shall include interest on the unpaid balance at the Treasury Rate. All payments shall occur within 12 months of the effective date of contract and shall be made out of the pension plan and not out of the private funds of the contractor.

The Treasury rate is based on Treasury Regulations, Section 12 of the Contracts Disputes Act of 1978, as contained in Volume 41 of USC Section 611 as published in the Federal Register.

- (2) *Contractor Retention of Assets and Liabilities.* The Contractor shall retain liabilities and assets equal to liabilities specified in subparagraphs c.(2)(a), c.(2)(b), and c.(2)(d).
- (3) *Transfer of Assets and Liabilities Upon Establishment of a Replacement Pension Plan.* Total covered DOE contract service liability associated with subparagraphs c.(2)(c), transfers with assets of paragraph d.(1)(b) above, if any.

4. Termination or Expiration of DOE Contract; Defined-Contribution Plans

All funds not allocable to vested contract service of participants in a defined-contribution plan shall be creditable to DOE. Thus, the Contractor shall credit to DOE those nonvested DOE contributions for employees who withdraw from the plan and all DOE contributions paid toward periods beginning on or after the contract termination date. For periods beginning before the contract termination date, the Contractor may use such credits to reduce future contributions. In such cases, the Contractor shall submit to DOE an accounting of such reductions. Moreover, the Contractor shall submit to DOE all legally required annual filings and shall provide DOE an annual accounting of number of participants, aggregate forfeitures.

5. Termination or Merger of a Defined Benefit Plan

- a. Any termination or merger of a defined benefit plan which directly or indirectly affects plan participants at the facility shall require DOE approval.

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- b. Asset and liability levels upon termination or merger shall be those values determined without consideration of excess transfers between the facility and any other division within the corporation during the 24 months before the effective date of termination or merger. For purposes of this paragraph, excess transfers shall mean those transfers occurring after total assets transferred to or from the facility total more than three percent of the plan's actuarial accrued liability as that liability stood 24 months before the effective date of termination or merger.
- c. Whenever possible, if plan termination or merger accompanies contract termination, the Contractor and DOE shall arrange for the transfer of DOE assets and DOE contract liabilities to a deferred compensation plan of a successor Contractor or to a separate contract administered by a financial institution. Such transfer shall require DOE approval.
- d. If plan terminates fully or partially, DOE's liability shall be the liability for a terminating defined benefit plan according to PBGC assumptions and procedures. The Contractor shall reimburse the DOE the excess, plus simple interest at the Treasury Rate on that excess, of plan assets over that liability. Likewise, the DOE shall reimburse the Contractor the excess of the liability over plan assets plus simple interest at the Treasury rate on that excess. Such reimbursements shall occur within 12 months of the effective date of plan termination.
- e. In no event shall the merger of the pension plan with another corporate plan diminish DOE plan assets or change valuation and accounting procedures for those assets.

6. Supplement Retirement Income Plan

In certain situations, a supplemental plan may be appropriate. The Contractor will propose to the Contracting Officer provisions for establishing a supplemental retirement income plan.

G. Other Benefit Plans

- 1. After the effective date of this modification, pension and other employee benefits will be consistent with those in existence at WSRC on 30 September 1996, as modified, as evidenced by: (i) WSRC 5B Manual, (ii) WSRC Compensation Handbook; (iii) WSRC 1B Manual; and (iv) WSRC Benefit Plan Documents.;

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2. Customary and reasonable increases in cost due to carrier's charges for administration, claims, taxes, and risk charges will be negotiated and approved by WSRC.
3. Benefit plan design changes that reduce costs will be approved and implemented by WSRC.
4. All major design changes, defined by ERISA as material modifications to the summary plan description and/or plan document, to the benefit plans that will materially increase DOE costs will be submitted to DOE for approval prior to implementation.

H. International Relocation Expenses

It is recognized by the parties that from time to time it may be in the interests of DOE and the Contractor or its Primary Sub-contractors to relocate personnel from international locations to SRS. When employees are relocated from international locations outside North America, costs will be allowable with the express written approval of the Contracting Officer.

I. Pay In Lieu of Notice

When an employee is terminated by the Company for any reason except "discharged for cause," he may receive pay in lieu of notice up to thirty (30) days with the approval of the Human Resources Manager.

J. Time Off Due to Public Emergency

Employees may be granted time off with pay during a public emergency which effectively prevents their attendance at work or the continuance of work in a normal and orderly manner. A public emergency includes either a natural disaster (such as fire, flood, earthquake), a man-made disaster (such as a demonstration, riot, or act of sabotage), or inclement weather. Authorization for time off with pay for such emergencies will be made by the Contractor's General Manager with notice to DOE. If such time off with pay will exceed the number of hours of the employee's regular shift(s), DOE approval is required.

K. Employee Programs

1. Morale and Motivation and Employee Programs

The Contractor may initiate employee organization(s) designed to improve company loyalty, team work, or physical fitness. DOE

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reimbursement of the cost of these programs (**Morale and Motivation Program**) and the employee programs identified below will be limited to an amount not to exceed **sixty-five dollars (\$65.00)** per employee per year. The amount reimbursed each year will be computed by multiplying the total number of employees on the payroll at the end of each month by one-twelfth (1/12) of the possible annual allocation and obtaining the aggregate amount for the twelve (12) months of the fiscal year. During each fiscal year, the Contractor may contribute up to \$5.00 per employee to the SRS Operations Recreation Association (ORA) from the annual amount computed to be reimbursed by DOE. However, the allocation of monies for these programs will be at the discretion of the Contractor. WSRC will submit to the Contracting Officer or designated representative quarterly expenditure reports which include the details of each month's computation and the identification of payments made to the recreation association (ORA) from funds obligated to WSRC and DOE. WSRC shall obtain agreement from the ORA reserving the right to audit association expenditures and requiring the submission of an annual accounting of association activities.

The **Morale and Motivation Program** plus the following employee programs are approved, subject to the cost limitation set forth above:

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Traveling Science Demonstration Program  
Science Education for Public Understanding  
CSRA College Night  
DOE SR Regional Science Bowl  
Excellence-In-Teaching Mini Grants  
WSRC President's Imperative Recognition

Annual SRS Boy Scout Camporee  
WSRC Team Service Award  
WSRC Team Service Awards  
Toys for Tots  
Craft Apprentice Program  
Community Service Awards  
Intellectual Property Awards  
Inventors/Authors Recognition Awards  
    Ceremony  
Ethics Conference  
Ethics Award  
Engineering Week/Technology Day  
Office Professional Quality Council  
WSRC Diversity Board of Directors  
Non-FEMA Immediate Support  
Safe Workers Recognition Program  
Safety Art Program  
Safety Conference Program  
WSRC Safety Observers  
Safety Incentive Program  
Voluntary Protection Program  
WSRC President's Safety Award  
Office Professional Safety Conference Booth  
Heartwalk

Excluded from the funds approved for the above programs are the Site Blood Drive, the Site Food Drive, the United Way Campaign, the Research Intern Program and the School to Work programs which are to be separately approved annually by the Contracting Officer. In addition, the above cost authorization does not include the costs for business meals addressed in MRP 3.15 or travel voucher payments for business meals, support for the Citizens Advisory Board, Foreign Visitors or special conference. Support for the Citizens Advisory Board, Foreign Visitors and special conferences are to be separately approved by the Contracting Officer. Costs for business meals covered by MRP 3.15 and travel voucher payments for business meals are to be processed in accordance with the contractor's standard procedures.

The approval of subject programs as submitted presumes all costs requested and subsequently expended, including food, meet the criteria for allowability.

2. Safety Clothing And Equipment (Excludes Construction Craft Employees)

A total of up to \$75 per year for the purchase of safety shoes is allowable for each employee if the employee is required to wear them in the performance of his/her job. The allowance for safety shoes may be increased only with the approval of the Contracting Officer. Similarly, safety glasses will be provided to those employees who are required to wear them to satisfy job safety requirements. Costs of eye examinations are unallowable, unless previously approved by the Contracting Officer.

3. Other Employee Programs

The annual budgets for other employee programs including educational outreach, training, employee assistance, safety programs and awards, subscriptions, memberships and licenses and employee and community relations programs shall be submitted with the Annual Operating Plan for DOE approval.

L. Employee Suggestion Program

The Contractor may implement an employee cost savings suggestion program that encourages the submission of cost saving ideas. Costs for conducting the program and making payments to employees under the program shall not exceed \$500,000 per fiscal year. (Note: Program administration costs, i.e., employee salary, benefits, pension costs, etc. are not included in the \$500,000.) Prior to charging the Government for any program costs, the contractor shall submit its program description to the Contracting Officer for approval. The description shall identify types of suggestions which are eligible for payment (e.g., “soft” or cost avoidance type suggestions or “hard dollar” suggestions, etc.), the payments or range of payments to be made under the program to employees, budget for program promotion and implementation and costs of program administration. The Contractor shall provide a semi-annual report on the program identifying number of suggestions made, number accepted and implemented, costs expended under the program and dollar savings.



**APPENDIX B  
SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH THE  
PAYMENTS CLEARED FINANCING AGREEMENT**

The Special Financial Institution Account Agreement contained in Westinghouse Savannah River Company (WSRC) Purchase Order AC15053T, and any/all changes thereto, between WSRC and Bank of America, is hereby incorporated by reference.

**PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**  
**SECTION J – LIST OF ATTACHMENTS**

**APPENDIX C –SMALL BUSINESS SUBCONTRACTING PLAN**

PART III -LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS  
SECTION J – LIST OF ATTACHMENTS

**APPENDIX D – KEY PERSONNEL**

Pursuant to the clause entitled “Key Personnel,” the following positions are considered to be essential to work being performed.

<u>Name</u>	<u>Title</u>
Robert A. Pedde	President
Dan Becker	Chief Financial Officer
Joseph Shine	General Counsel
Todd Wright	Director, SRTC
Bill Elkins	Director, Project Design and Construction Services Business Unit
Harold Conner (ACTING)	Chief Operations Officer, Operations Business Unit
Charles Spencer	Manager, Defense Programs, Operations Business Unit
James G. Angelos (ACTING)	Manager, Nuclear Nonproliferation Programs, Operations Business Unit
Sam Kelly	Manager, Solid Waste and Infrastructure, Operations Business Unit
Bill Johnson (ACTING)	Chief Closure Officer, Closure Business Unit
Edwin Davis	Manager, Facility Disposition Project, Closure Business Unit
Laurie Hollick (ACTING)	Director, Field Support Services Business Unit
John G. Meyer (ACTING)	Manager, Safeguards and Security and Emergency Services, Field Support Services Business Unit
Brent Rankin	Manager, Environment, Safety and Health Services, Field Support Services Business Unit

\* Positions designated as “Acting” have not been officially approved as Key Personnel by DOE, but reflect the personnel functioning in the position under the Contractor’s January 2003 reorganization.

**PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS  
SECTION J – LIST OF ATTACHMENTS**

**APPENDIX E  
DEAR 970.5204-2 LAWS, REGULATIONS,  
AND DOE DIRECTIVES, LIST B LIST OF APPLICABLE  
DIRECTIVES**

Pursuant to the LAWS, REGULATIONS, AND DOE DIRECTIVES clause, the contractor shall adhere to the ES&H requirements compliance process delineated in the Site Standards/Requirements Identification Document (S/RID). For requirements other than ES&H, the contractor shall, in accordance with the existing SR Directives Management System, adhere to the existing DOE directive requirements that are the basis for established procedures and programs until authorized approvals are obtained to deviate from established requirements. Revised or new requirements shall be forwarded to the contractor by the Contracting Officer or designee. The S/RID, and superseding versions thereof, are hereby incorporated by reference.

**PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**  
**SECTION J – LIST OF ATTACHMENTS**

**APPENDIX F–SENSITIVE FOREIGN NATIONS CONTROL**

In accordance with the contract clause in Section I entitled "Sensitive Foreign Nations Controls," this Attachment sets forth the requirements the contractor must comply with during the performance of work under this contract.

1. Definition of Sensitive Country

Sensitive Country (Reference DOE Policy and Notice No. 142.1, or superceding directives)  
For purposes of this contract, a "sensitive country" shall be one of the countries listed below:

Algeria  
Armenia  
Azerbaijan  
Belarus  
China (People's Republic of China)  
Cuba  
Georgia  
India  
Iran  
Iraq  
Israel  
Kazakhstan  
North Korea (Democratic People's Republic of)  
Kyrgyzstan  
Libya  
Moldavia  
Pakistan  
Russia  
Sudan  
Syria  
Taiwan (Republic of China)  
Tajikistan  
Turkmenistan  
Ukraine  
Uzbekistan

2. Definitions

- a. Foreign National A foreign national is any person who is not a U.S. national or is a stateless person.
  - (1) Immigrant Alien A foreign national authorized by the Immigration and Naturalization Service to reside and work in the U.S. for an indefinite period and who is eligible to become, in time, a U.S. citizen. Most immigrant aliens may also be referred to as Permanent Resident Aliens (PRA's).
  - (2) Stateless Person One who currently is without nationality (a) by the action of a state in withdrawing the protection of nationality, (b) by his or her own action in effectively renouncing the nationality previously held, or (c) because he or she has never held nationality due to the circumstances of birth.
  
- b. Exchange Visitor Program A program sponsored by the United States Information Agency. The program provides for joint projects, research assignments, or specialized training at Department of Energy (DOE) facilities by foreign nationals selected by officials of their country, or by DOE to promote the general interest of international exchange.
  
- c. Foreign National Visits Foreign nationals sponsored for visits or assignments may include, among others:
  - (1) Officials or other persons employed by foreign governments or other foreign institutions, who may or may not be involved in cooperation under international agreements;
  - (2) Foreign students at U.S. institutions;
  - (3) Employees of DOE or other U.S. Government agencies or their contractors, of universities, of companies (professional or service staff), or of other institutional; and
  - (4) Prospective employees of DOE or DOE contractors.
  
- d. High Level or Protocol Visits This connotes the visit of a foreign national who is afforded special consideration for policy reasons.
  
- e. Indices Check A procedure whereby a request is made to appropriate U.S. Government agencies to determine if information exists on a particular foreign national.

**CONTRACT NO. DE-AC09-96SR18500  
MODIFICATION NO. M100**

- f. Security Facility A specific physically bounded area, individually certified by the cognizant security officer in accordance with DOE Order 5632.1C Protection and Control of Safeguards and Security, or superceding directives, which has been approved by DOE for generating, receiving, using, processing, storing, reproducing, transmitting, destroying, or handling special nuclear material or classified matter. A security facility temporarily sanitized to protect a security interest during a visit or assignment continues to be a security facility for the purpose of DOE DOE Policy and Notice No. 142.1, or superceding directives.
- g. Sensitive Facility A designated DOE facility listed in DOE Policy and Notice No. 142.1, or superceding directives, or superceding directives, which contains one or more security facilities and/or nonproliferation information, technology or other sensitive subjects.
- h. Sensitive Subjects Unclassified subject/topic identified by DOE which involves information, activities, and/or technologies that are relevant to national security. Disclosure of sensitive subjects has the potential for enhancing nuclear weapons capability, leading to nuclear proliferation, divulging militarily critical technologies, or revealing other advanced technologies. Therefore, they require special management oversight, especially prior to release to foreign nationals. Some sensitive subjects are already controlled as Unclassified Controlled Nuclear Information or as Export Controlled Information under U.S. laws and regulations.
- i. Security Plan A plan developed and implemented to protect DOE and DOE contractor personnel and facilities, and to prevent the compromise of a DOE security interest or sensitive subject to a foreign visitor or assignee; this is a critical element of the visits and assignments system.
- j. Sensitive Country A country to which particular consideration is given for policy reasons during the DOE internal review and approval process of visits and assignments by foreign nationals. Countries may appear on this list for reasons of national security, nuclear nonproliferation, regional instability, or terrorism support. The DOE list does not necessarily reflect the policies or views of any other agency of the U.S. Government. For purposes of DOE Policy and Notice No. 142.1, or superceding directives, a foreign national is considered to be from a sensitive country, if any of the following is true:
  - (1) Citizen of a sensitive country;
  - (2) Place of employment in a sensitive country;
  - (3) Place of birth in a sensitive country unless the person is now a U.S. citizen (or in accordance with other DOE guidance);

- (4) A stateless person.
  
  - k. Host A DOE or DOE contractor or employee who is sponsoring a visitor or assignee under DOE Policy and Notice No. 142.1, or superceding directives. A visitor or assignee is not permitted to be a host.
  
  - l. Visit Presence of an invited foreign national at a DOE facility or at a meeting or other interaction in the U.S. sponsored by a DOE facility for seven calendar days or less, or if in accordance with an international agreement of 21 calendar days or less. Visits are normally for the purpose of technical discussions, orientation tours, observation of projects or equipment, contract service work, or discussion of collaboration on topics of mutual interest without participation in the work of the facility, or for courtesy purposes.
  
  - m. Assignment Presence of an invited foreign national at a DOE facility, or at a meeting or other interaction in the U.S. sponsored by a DOE facility, for more than seven calendar days in the absence of an international agreement, or for the number of days specified in an international agreement. Assignments are limited to two years duration (one year for sensitive cases), subject to extension in accordance with DOE Policy and Notice No. 142.1, or superceding directives. Assignments are normally for the purpose of participating in the work of the facility, gaining experience, or contributing to projects. Assignees may include employees, guests, or consultants.
3. Prior Approvals Relating to Foreign Nationals
- a. Foreign visits and assignments pertaining to DOE programs must be in accordance with DOE Policy and Notice No. 142.1, or superceding directives and other DOE policies furnished in writing to the contractor.
  - b. Prior DOE approval shall be obtained for travel to the Sensitive Countries by a contractor employee, while employee's salary is directly charged to contract funds, or by any person whose travel is to be reimbursed from the contract fund.
4. Reports Relating to Foreign Visits and Assignments
- a. Host Report Requirements To enable the approving official to evaluate the effectiveness of visits and assignments, and to assist in determining the desirability of future such visits and assignments, host reports are required for those visits and assignments for which approval authority has not been designated. The host report will be submitted to DOE in accordance with DOE Policy and Notice No. 142.1, or superceding directives.



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**MODIFICATION NO. M100**

- b. On a request of the Contracting Officer, the Contractor shall furnish a semiannual report to DOE-AL on total foreign national employment.

**APPENDIX G – PERFORMANCE GUARANTEE AGREEMENT**

The Performance Guarantee Agreement is required by the Section H clause entitled “Performance Guarantee.”

**APPENDIX H – GUIDANCE FOR PREPARATION OF DIVERSITY PLAN**

*(See Section I Clause entitled "Diversity Plan")*

This Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues are already addressed in a Contract, the Contractor need only cross reference the location.

**Work Force**

This Contract includes clauses on Equal Opportunity and Affirmative Action. The Contractor should discuss its policies and plans for implementation of these clauses in its operations. If the Contractor already has procedures in place, these should be discussed and copies provided.

**Educational Outreach**

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may already be discussed in the proposal submitted for this Contract or in the Contract itself and could include: educational assistance allowance, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any program supporting Historically Black Colleges and Universities, Hispanic Serving Institutions and Native American Institutions.

**Community Involvement and Outreach**

An offeror's proposal or this Contract may include a section dealing with community involvement and outreach activities. In that event, those sections may be cross referenced and do not need to be repeated. Contractor community relation activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to Governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

### **Subcontracting**

If appropriate to the Contractor, the Contract will contain FAR 52.219-9 "Small, Small Disadvantaged, and Woman Owned Small Business Subcontracting Plan" and other small business related clauses. Additionally, the RFP may have contained additional guidance on small business subcontracting. The Contractor should briefly summarize its subcontracting plan. If the Contractor is participating, or plans to participate, in the Department's Mentor-Protégé Program, this involvement or planned involvement, should be summarized. Information concerning its subcontracting plans already submitted and approved do not need to be redeveloped or renegotiated.

### **Economic Development (Including Technology Transfer)**

Many of the Department's contracts include clauses dealing with technology transfer. Planning or activities developed under such clauses may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business, small disadvantaged businesses, or woman-owned small businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

2. AMENDMENT/MODIFICATION NO. <b>A101</b>	3. EFFECTIVE DATE <b>See Block 16C.</b>	4. REQUISITION/PURCHASE REQUEST NO. <b>09-03SR18500.010 &amp; .011</b>	5. PROJECT NO. (IF APPLICABLE)
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6. ISSUED BY (CODE)	7. ADMINISTERED BY (IF OTHER THAN ITEM 6) (CODE)
U. S. Department of Energy Savannah River Operations Office Contracts Management Division P.O. Box A Aiken, SC 29802	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code)	9A. AMENDMENT OF SOLICITATION NO.
Westinghouse Savannah River Company LLC P.O. Box 616 Aiken, SC 29802	9B. DATED (SEE ITEM 11)
	10A. MODIFICATION OF CONTRACT/ORDER NO. <b>DE-AC09-96SR18500</b>
	10B. DATED (SEE ITEM 13) <b>08/06/96; Effective 10/01/96</b>
CODE	FACILITY CODE

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)  
**See Block 14 - Increase of \$182,955,737.90**

**13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14**

( X )	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES such as changes in the paying office, appropriation data, SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) <b>Funding Action - Clause I.123 - OBLIGATION OF FUNDS</b>

F. IMPORTANT: Contractor  is not  is required to sign and return \_\_\_\_\_ copies to the issuing office.

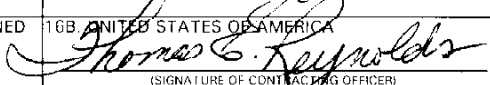
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)  
**The purpose of this Modification is to increase funding currently obligated to the Contract.**

**a. Part I - The Schedule, Section B, paragraph B.4 - Obligation of Funds, is hereby modified as follows:**

**The amount of funds presently obligated by the Government with respect to this Contract is hereby increased by \$182,955,737.90 from \$8,945,177,778.25 to \$9,128,133,516.15.**

(Continued on Page 2)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A. NAME AND TITLE OF SIGNER (type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (type or print)
	Thomas E. Reynolds, Deputy Director Contracts Management Division
15b. CONTRACTOR/OFFEROR	15C. DATE SIGNED
(SIGNATURE OF PERSON AUTHORIZED TO SIGN)	16B. UNITED STATES OF AMERICA
	 (SIGNATURE OF CONTRACTING OFFICER)
	16C. DATE SIGNED
	<b>3/31/03</b>

14. Description of Amendment/Modification (Continued)

b. Accounting and Appropriation Data

<u>Fund Type</u>	<u>Approp. Symbols</u>	<u>Funding</u>
TF	89X0243.91	\$ 1,730,878.38
TE	89X0242.91	63,725,021.68
WA	89X0222.91	536,968.00
TC	89X0240.91	111,192,310.74
3T	89X0240.93	263,448.52
NS	89X0309.91	4,842,071.80
2Y	89X0224.92	43,269.89
3Y	89X0224.93	(1,731.97)
SA	89X0228.91	87,300.86
YA	89X0224.91	<u>536,200.00</u>
	Total	\$ 182,955,737.90

c. All other terms and conditions remain in effect and unchanged.

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. A103	3. EFFECTIVE DATE See Block 16C.	4. REQUISITION/PURCHASE REQUEST NO. 09-03SR18500.013	5. PROJECT NO. (IF APPLICABLE)	
6. ISSUED BY U. S. Department of Energy Savannah River Operations Office Contracts Management Division P.O. Box A Aiken, SC 29802		7. ADMINISTERED BY (IF OTHER THAN ITEM 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Westinghouse Savannah River Company LLC P.O. Box 616 Aiken, SC 29802		9A. AMENDMENT OF SOLICITATION NO.		
		9B. DATED (SEE ITEM 11)		
		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC09-96SR18500		
		10B. DATED (SEE ITEM 13) 08/06/96; Effective 10/01/96		
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
See Block 14 - Increase of \$12,193,475.24

13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES such as changes in the paying office, appropriation data, set forth in ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) Funding Action - Clause I.123 - OBLIGATION OF FUNDS

E. IMPORTANT: Contractor  is not  is required to sign and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)  
**The purpose of this Modification is to increase funding currently obligated to the Contract.**

a. Part I - The Schedule, Section B, paragraph B.4 - Obligation of Funds, is hereby modified as follows:

**The amount of funds presently obligated by the Government with respect to this Contract is hereby increased by \$12,193,475.24 from \$9,467,642,505.78 to \$9,479,835,981.02.**

(Continued on Page 2)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Thomas E. Reynolds, Deputy Director Contracts Management Division		
15b. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA <i>Thomas E. Reynolds</i> (SIGNATURE OF CONTRACTING OFFICER)	16C. DATE SIGNED 5/28/03
(SIGNATURE OF PERSON AUTHORIZED TO SIGN)			

14. Description of Amendment/Modification (Continued)

b. Accounting and Appropriation Data

<u>Fund Type</u>	<u>Approp. Symbols</u>	<u>Funding</u>
TF	89X0243.91	\$ 402,000.00
TE	89X0242.91	(2,422,974.16)
YA	89X0224.91	116,000.00
TC	89X0240.91	2,075,000.00
3T	89X0240.93	2,717,600.00
NS	89X0309.91	8,576,000.00
3Y	89X0224.93	38,800.00
SA	89X0228.91	130,578.81
NR	89X0314.91	<u>560,470.59</u>
	Total	\$ 12,193,475.24

c. All other terms and conditions remain in effect and unchanged.



<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE OF PAGES 1 2	
2. AMENDMENT/MODIFICATION NO. A102	3. EFFECTIVE DATE See Block 16C.	4. REQUISITION/PURCHASE REQUEST NO. 09-03SR18500.012	5. PROJECT NO. (IF APPLICABLE)		
6. ISSUED BY U. S. Department of Energy Savannah River Operations Office Contracts Management Division P.O. Box A Aiken, SC 29802		7. ADMINISTERED BY (IF OTHER THAN ITEM 6) CODE			
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Westinghouse Savannah River Company LLC P.O. Box 616 Aiken, SC 29802			9A. AMENDMENT OF SOLICITATION NO.		
			9B. DATED (SEE ITEM 11)		
			10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC09-96SR18500		
			10B. DATED (SEE ITEM 13) 08/06/96; Effective 10/01/96		
CODE	FACILITY CODE		11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS		

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
See Block 14 - Increase of \$339,508,989.63

13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

<input checked="" type="checkbox"/>	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES such as changes in the paying office, appropriation data, SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF:
<input checked="" type="checkbox"/>	D. OTHER (Specify type of modification and authority) Funding Action - Clause I.123 - OBLIGATION OF FUNDS

E. IMPORTANT: Contractor  is not  is required to sign and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)  
**The purpose of this Modification is to increase funding currently obligated to the Contract.**

a. Part I - The Schedule, Section B, paragraph B.4 - Obligation of Funds, is hereby modified as follows:  
**The amount of funds presently obligated by the Government with respect to this Contract is hereby increased by \$339,508,989.63 from \$9,128,133,516.15 to \$9,467,642,505.78.**

(Continued on Page 2)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A. NAME AND TITLE OF SIGNER (type or print) Thomas E. Reynolds, Deputy Director Contracts Management Division		16A. NAME AND TITLE OF CONTRACTING OFFICER (type or print) Thomas E. Reynolds, Deputy Director Contracts Management Division	
15b. CONTRACTOR/OFFEROR  (SIGNATURE OF PERSON AUTHORIZED TO SIGN)	15c. DATE SIGNED	16B. UNITED STATES OF AMERICA <i>Thomas E. Reynolds</i> (SIGNATURE OF CONTRACTING OFFICER)	16c. DATE SIGNED 4/29/03

14. Description of Amendment/Modification (Continued)

b. Accounting and Appropriation Data

<u>Fund Type</u>	<u>Approp. Symbols</u>	<u>Funding</u>
TF	89X0243.91	\$ (371,000.00)
TE	89X0242.91	334,987,580.10
WA	89X0222.91	44,277.00
TC	89X0240.91	(5,078,288.09)
3T	89X0240.93	806,873.00
NS	89X0309.91	7,599,243.00
2Y	89X0224.92	49,149.62
3Y	89X0224.93	0.
SA	89X0228.91	1,751,170.00
YA	89X0224.91	(30,015.00)
HA	89X0215.91	<u>(250,000.00)</u>
	Total	\$ 339,508,989.63

c. All other terms and conditions remain in effect and unchanged.

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. A104	3. EFFECTIVE DATE See Block 16C.	4. REQUISITION/PURCHASE REQUEST NO. 09-03SR18500.014	5. PROJECT NO. (IF APPLICABLE)
6. ISSUED BY U. S. Department of Energy Savannah River Operations Office Contracts Management Division P.O. Box A Aiken, SC 29802	CODE	7. ADMINISTERED BY (IF OTHER THAN ITEM 6)	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, state, ZIP Code) Westinghouse Savannah River Company LLC P.O. Box 616 Aiken, SC 29802		9A. AMENDMENT OF SOLICITATION NO.	
CODE		9B. DATED (SEE ITEM 11)	
FACILITY CODE		10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC09-96SR18500	
		10B. DATED (SEE ITEM 13) 08/06/96; Effective 10/01/96	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS			

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
See Block 14 - Increase of \$5,509,866.85

13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14

( X )	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO:(SPECIFY AUTHORITY) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES such as changes in the paying office, appropriation data, set forth in ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Funding Action - Clause 1.123 - OBLIGATION OF FUNDS

E. IMPORTANT: Contractor  is not  is required to sign and return \_\_\_\_\_ copies to the issuing office.

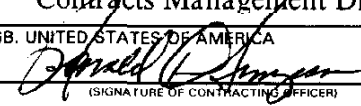
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)  
**The purpose of this Modification is to increase funding currently obligated to the Contract.**

a. Part I - The Schedule, Section B, paragraph B.4 - Obligation of Funds, is hereby modified as follows:

**The amount of funds presently obligated by the Government with respect to this Contract is hereby increased by \$5,509,866.85 from \$9,479,835,981.02 to \$9,485,345,847.87.**

(Continued on Page 2)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A. NAME AND TITLE OF SIGNER (type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (type or print) Ronald D. Simpson, Director Contracts Management Division
15b. CONTRACTOR/OFFEROR  (SIGNATURE OF PERSON AUTHORIZED TO SIGN)	15C. DATE SIGNED
	16B. UNITED STATES OF AMERICA  (SIGNATURE OF CONTRACTING OFFICER)
	16C. DATE SIGNED 4/26/03

14. Description of Amendment/Modification (Continued)

b. Accounting and Appropriation Data

<u>Fund Type</u>	<u>Approp. Symbols</u>	<u>Funding</u>
TF	89X0243.91	\$ (450,000.00)
TE	89X0242.91	2,731,917.60
NS	89X0309.91	2,683,500.00
TC	89X0240.91	51,023.71
3T	89X0240.93	(27,064.60)
NU	89X0309.91	400,000.00
2Y	89X0224.92	<u>120,490.14</u>
	Total	\$ 5,509,866.85

c. All other terms and conditions remain in effect and unchanged.