

SECTION II
 STANDARD TERMS AND CONDITIONS FOR
 FIXED PRICE CONSTRUCTION CONTRACTS
 INDEX OF CLAUSES

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

<u>No.</u>	<u>Title</u>	<u>Page</u>	<u>No.</u>	<u>Title</u>	<u>Page</u>
"A" Clauses apply to Requests for Quotation and Contracts at any value.			*A78	Open Bidding on Federal and Federally Funded Construction Projects	19
A10	Definitions	3	*A80	Sandia Policy on Equal Opportunity	19
A11	Unclassified Contract	3	*A81	Substance Abuse Prevention and Testing	19
A12	Assignment	3	*A97	Hazardous Material Identification and Material Safety Data	20
*A13	Releases Void	3	*A98	Security	20
*A14	Notice of Labor Disputes	3	*A99	Additional Clauses	21
*A15	Delivery of Excess Quantities \$250 or less	3	"B" Clauses Apply to Requests for Quotation and Contracts that Exceed \$2,000		
*A16	Contractor's Information	3	*B10	Davis-Bacon Act	21
A17	Delegated Representatives	3	*B11	Contract Work Hours and Safety Standards Act - Overtime Compensation	22
*A18	Defense Priority and Allocation Requirements	3	*B12	Withholding of Funds	23
A19	Terms and Conditions	4	*B13	Payrolls and Basic Records	23
*A23	Applicable Law	4	*B14	Apprentices and Trainees	24
*A24	Contractor Records Retention	4	*B15	Compliance with Copeland Act Requirements	24
A25	Commerce in Explosives, Firearms and Ammunition - Exemption	4	*B16	Subcontracts (Labor Standards)	24
*A27	Order of Precedence	4	*B17	Contract Termination - Debarment	25
*A28	Other Contracts	4	*B18	Compliance with Davis-Bacon and Related Act Regulations	25
*A30	Payments	4	*B19	Disputes Concerning Labor Standards	25
*A31	Taxes	4	B20	Certificate of Eligibility	25
*A33	Travel	4	"D" Clauses apply to Requests for Quotation and Contracts that Exceed \$10,000		
*A34	Pricing of Contract and Subcontract Modifications	5	*D12	Affirmative Action Compliance Requirements for Construction	25
*A38	Notice of Potential Delay	5	*D41	Reporting of Royalties	28
A39	Set-Offs	5	*D42	Patent Indemnity - Construction Contracts	28
*A40	Inspection of Construction	5	*D53	Affirmative Action to Ensure Equal Employment Opportunity	28
*A41	Changes	5	"E" Clauses Apply to Requests for Quotation and Contracts valued over \$25,000		
*A42	Suspension of Work	6	*E11	Bankruptcy	28
A43	Certification of Claims	6	E21	Additional Bond Security	28
*A45	Termination for Default	6	E22	Payment and Performance Bonds	29
*A46	Termination for Convenience	7	*E23	Price or Fee Adjustment for Illegal or Improper Activity	29
A49	Adjustment of Contract Completion Date	8	"F" Clauses Apply to Requests for Quotation and Contracts valued over \$500,000		
*A50	Release of Information	9	*F10	Contractor/Subcontractor Certified Cost or Pricing Data	30
*A51	Authorization and Consent	9	*F11	Termination of Defined Benefit Pension Plans	31
*A53	Sandia Provided Information	9	*F20	Audit	31
*A60	Property	9			
*A61	Specifications and Drawings	11			
*A62	Site Investigation and Conditions Affecting the Work	11			
*A63	Differing Site Conditions	12			
*A64	Operations, Dismantled Equipment and Material, Utilities and Storage Areas	12			
*A65	Protection of Existing Vegetation, Structures, Equipment, Utilities, Improvements, Materials and Work	12			
*A66	Material and Workmanship	13			
*A67	(I) Safety, Health, Environment, Property and Fire Protection; (II) Access to Sandia and Government-Controlled Premises; (III) Liability; (IV) Contractor or Subcontractor Use of Government-Owned Vehicles; (V) Other Safety Provisions	13			
A68	Superintendence by the Contractor	18			
*A69	Manufacturing and Testing Standards	18			
*A73	Warranty of Construction	18			

*Flow Down Provision Indicated - Inclusion of these clauses, suitably modified to identify parties, is required in subcontracts at any tier.

SECTION II
STANDARD TERMS AND CONDITIONS FOR
FIXED PRICE CONSTRUCTION CONTRACTS
INDEX OF CLAUSES

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

"R" Clauses Apply to This Request for Quotation (RFQ) at all Values

R10	Taxes	31
R12	New Supplies	31
R13	Government Materials/Equipment	31
R20	Certificate Of Independent Price Determination	31
R21	Contingent Fee Representation and Agreement	31
R22	Acknowledgment of Amendments to this RFQ	32
R23	False Statements in Quotations	32
R25	Submission of Quotations	32
R26	Explanation to Prospective Quoters	32
R27	Late Submissions, Modifications, and Withdrawal of Quotations	32
R32	Preparation of Quotations - Construction	32
R40	Contract Award	32
R50	Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity	32

*Flow Down Provision Indicated - Inclusion of these clauses, suitably modified to identify parties, is required in subcontracts at any tier.

"A" CLAUSES APPLY AT ANY VALUE

CLAUSE A10 - DEFINITIONS

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

(a) SANDIA

Sandia Corporation, a prime contractor of the United States Department of Energy, which operates Sandia National Laboratories under Contract No. DE-AC04-76DP00789, as amended.

(b) SCR - SANDIA CONTRACTING REPRESENTATIVE

The person authorized to execute and/or administer this contract on behalf of Sandia or the authorized successor to such person.

(c) GOVERNMENT

The United States of America.

(d) DOE

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

(e) CONTRACTOR

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

(f) SUBCONTRACTS

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

(g) SDR - Sandia Delegated Representative

The person(s) who has been delegated limited authority as defined in Section I of this contract. THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SECTION I OF THIS CONTRACT. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT INCLUDING, BUT NOT LIMITED TO: STATEMENT OF WORK, PRICE, SCHEDULE, AND DRAWINGS AND SPECIFICATIONS INCORPORATED THEREIN.

(h) FAR - The Federal Acquisition Regulation

(i) DEAR - The Department of Energy Acquisition Regulation

CLAUSE A11 - UNCLASSIFIED CONTRACT

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

CLAUSE A12 - ASSIGNMENT

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

CLAUSE A13 - RELEASES VOID

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

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

CLAUSE A14 - NOTICE OF LABOR DISPUTES

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

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

CLAUSE A15 - DELIVERY OF EXCESS QUANTITIES OF \$250 OR LESS

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and Sandia receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. Sandia may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of Sandia, either be returned at the Contractor's expense or retained and paid for by Sandia at the contract unit price.

CLAUSE A16 - CONTRACTOR'S INFORMATION

No specifications, drawings, sketches, models, samples, tools, technical information, data, written, oral or otherwise, furnished by Contractor to Sandia hereunder, or in contemplation hereof, shall be considered by Contractor to be company sensitive or proprietary.

CLAUSE A17 - DELEGATED REPRESENTATIVES

The SCR may delegate personnel as authorized representatives for such purposes as and to the extent specified in the delegation. Such delegation shall be in writing to the Contractor, and shall designate by name the personnel so delegated as authorized representatives. The Sandia Delegated Representatives (SDR) shall exercise no supervision over the Contractor's employees.

CLAUSE A18 - DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

This clause applies only if the Signature Page designates a Government Priority.

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

Copies of the regulations may be obtained from the nearest office of the U. S. Department of Commerce.

CLAUSE A28 - OTHER CONTRACTS

Sandia or 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 Sandia or 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 SCR. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Sandia or Government employees.

CLAUSE A19 - TERMS AND CONDITIONS

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

CLAUSE A23 - APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by, and this contract shall be interpreted in accordance with, federal law and federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive or other clauses are in dispute, the laws of the State of New Mexico shall apply, if law exists in the State of New Mexico; if not, then the law of the location of the project shall apply.

CLAUSE A30 - PAYMENTS

(a) Sandia shall pay the Contractor, upon completion and acceptance of all work, the contract price as provided in this contract after Sandia's receipt of: (i) Contractor's properly executed invoice or voucher; and (ii) Contractor's presentation of a release of all claims against Sandia and the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of an assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15). The Contractor hereby agrees that the failure to execute and deliver the aforesaid release within 60 days of a written request for a release by the SCR shall be deemed to be and shall have the same effect as a fully executed release as set forth herein.

CLAUSE A24 - CONTRACTOR RECORDS RETENTION

Definition: Records include all books, paper, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them (44 USC 3301).

(b) Discount time will be computed from the date that a correct invoice or voucher is received in the office specified in the contract, or the date of the acceptance of work under this contract, whichever is later. Payment is deemed to be made, for the purposes of earning the discount, on the date of mailing of Sandia's check.

(a) Except as provided in (b) below, all records created in the performance of the contract shall be property of the Government, shall be retained in accordance with the General Records Schedules, DOE 1324.2A, and Records Management, DOE 1324.5A and shall be delivered to Sandia anytime as directed by Sandia.

(c) Sandia may take contract or invoice prompt payment discount.

(b) Financial and cost accounting, pay administration, and acquisitions and supply records as defined in 48 CFR 4.7 and other records incidental to the statement of work such as management information shall not be delivered to Sandia unless otherwise requested.

CLAUSE A31 - TAXES

(a) States Other Than New Mexico
The price shall not include any Federal, State or local taxes or duties. Such taxes, if applicable, shall be separately stated.

CLAUSE A25 - COMMERCE IN EXPLOSIVES, FIREARMS AND AMMUNITION - EXEMPTION

Commerce in Explosives, 27 CFR Subpart H, Section 55.141, exempts establishments owned by, or operated by or in behalf of, the United States. 18 USC Section 925 (a)(1) provides the exemption for commerce in firearms and ammunition.

(b) New Mexico
The New Mexico Gross Receipts Tax is not applicable to construction at Sandia in New Mexico. Sandia will furnish Nontaxable Transaction Certificates for construction materials and labor.

CLAUSE A27 - ORDER OF PRECEDENCE

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

CLAUSE A33 - TRAVEL

(a) Any travel outside the United States by Contractor personnel, in connection with work under this contract, requires advance written approval by the DOE.

(b) Any amounts allowed for travel pursuant to Clause A34 herein shall be limited to amounts prescribed under the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (P.L. 99-234).

CLAUSE A34 - PRICING OF CONTRACT AND SUBCONTRACT MODIFICATIONS

The cost principles and procedures set forth in FAR Part 31 as modified by DEAR Part 931 shall be used to price contract and subcontract modifications, if any, whenever cost analysis is performed to negotiate the price of any such modification.

CLAUSE A38 - NOTICE OF POTENTIAL DELAY

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

CLAUSE A39 - SET-OFFS

Should one or more other contracts, now or hereafter, exist between Sandia and the Contractor or with any affiliated corporation or company of the Contractor, concerning this or any other construction project, then a breach by the Contractor of any contract, may, at the option of Sandia, be considered a breach of all contracts; and in that event Sandia may terminate any or all of the contracts so breached, or may withhold moneys due or to become due on any such contracts, and apply the same toward payment of any damages suffered on that or any other such contracts.

CLAUSE A40 - INSPECTION OF CONSTRUCTION

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to Sandia. All work is subject to inspection and test by Sandia or the Government at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) The Sandia or Government inspections and tests are for the sole benefit of Sandia and the Government and do not:
 - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of Sandia or the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Sandia or Government construction observer does not relieve the Contractor from any contract requirement, nor is the construction observer authorized to change any term or condition of the specification without the SCR's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the SCR. Sandia or the Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Sandia or the Government shall perform all inspections and test in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by Sandia or the Government not to conform to contract requirements, unless in the public interest Sandia or the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises:

(g) If the Contractor does not promptly replace or correct rejected work, Sandia or the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, Sandia or the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the SCR shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, Sandia and the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the SCR determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Sandia's or the Government's rights under any warranty or guarantee.

CLAUSE A41 - CHANGES

- (a) The SCR may, at any time without notice to sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;

- (3) In the Government-furnished facilities, equipment, materials, services, or site; or:
- (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the SCR that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the SCR written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the SCR shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the SCR shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which Sandia or the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the SCR a written statement describing the general nature and amount of the proposal, unless this period is extended by Sandia or the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract
- (g) Contractor shall certify claims for an equitable adjustment of the contract price under this clause in accordance with Clause A43 entitled "Certification of Claims." Claims for adjustments of contract time must be in accordance with Clause A49 entitled "Adjustment of Contract Completion Date."

CLAUSE A42 - SUSPENSION OF WORK

- (a) The SCR may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the SCR determines appropriate for the convenience of Sandia or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the SCR in the administration of this contract, or (2) by the SCR's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this

contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the SCR in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

CLAUSE A43 - CERTIFICATION OF CLAIMS

- (a) The Contractor, in submitting a claim in excess of \$50,000 under Clause A41 entitled "Changes" or any other clause of this contract providing for an increase and/or a decrease in the contract price and/or the contract time must certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes Sandia is liable.
- (b) The United States False Claims Act is applicable to this contract because of the use of Federal funds, and the Contractor will be liable under that statute if the Contractor has actual knowledge of false information, acts in deliberate ignorance of the truth or falsity of information, or acts in reckless disregard of the truth or falsity of information with respect to any submission of a claim pursuant to this contract, for changes, extra work or other contractual relief.

CLAUSE A45 - TERMINATION FOR DEFAULT

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within the time, Sandia may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, Sandia may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Sandia or the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Sandia or the Government in completing the work.
- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if

- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of Sandia, (iv) acts of another Contractor in the performance of a contract with Sandia or the Government, (v) fires, (vi) floods, (vii) epidemics, (viii) quarantine restrictions, (ix) strikes, (x) freight embargoes, (xi) unusually severe weather, or (xii) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the SCR), notifies the SCR in writing of the causes of delay. The SCR shall ascertain the facts and the extent of delay. If, in the judgment of the SCR, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the SCR shall be final and conclusive on the parties.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued under the Termination for Convenience Clause of this contract.
- (d) The rights and remedies of Sandia or the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.
- (5) With approval or ratification to the extent required by the SCR, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the SCR, transfer title to the Government and deliver to Sandia (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Sandia
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the SCR may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which Sandia or the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the SCR, any property of the types referred to in subparagraph (6) above; 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 SCR. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Sandia under this contract, credited to the price or cost of the work, or paid in any other manner directed by the SCR.

CLAUSE A46 - TERMINATION FOR CONVENIENCE

- (a) Sandia may terminate performance of work under this contract in whole or, from time to time, in part if the SCR determines that a termination is in Sandia's or the Government's interest. The SCR shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the SCR, the Contractor shall immediately 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. (d)
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to Sandia, as directed by the SCR, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Sandia shall have the right to settle or to pay any termination settlement proposal(s) arising out of those terminations.
- (c) After expiration of the plant clearance period as defined in Subpart 45.6 of the FAR, the Contractor may submit to the SCR a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the SCR. The Contractor may request Sandia to remove those items or enter into an agreement for their storage. Within 15 days, Sandia will accept title to those items and remove them or enter into a storage agreement. The SCR 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.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the SCR in the form and with the certification prescribed by the SCR. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the SCR upon written request of the Contractor within this 1-year period. However, if the SCR 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 SCR 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.
- (e) Subject to paragraph (d) above, the Contractor and the SCR may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the

agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

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

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of:

- (i) The cost of this work;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
- (iii) A sum, as profit on (i) above, determined by the SCR under 49.202 of the FAR, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the SCR shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including:

- (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.

(g) Except for normal spoilage, and except to the extent that Sandia expressly assumed the risk of loss, the SCR shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the SCR, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Sandia or to a buyer.

(h) The cost principles and procedures of the FAR Part 31 as modified by DEAR Part 931, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) 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 Sandia or 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 the provisions of this clause and not recovered by or credited to Sandia.

(j) If the termination is partial, the Contractor may file a proposal with the SCR for an equitable adjustment of the price(s) of the continued portion of the contract. The SCR shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the SCR.

(k) (1) Sandia 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 SCR 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 Sandia 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 SCR because of the circumstances.

(1) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to Sandia or the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the SCR, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

CLAUSE A49 - ADJUSTMENT OF CONTRACT COMPLETION DATE

(a) The contract completion time will be adjusted only for causes specified in this contract. In the event the Contractor requests an extension of the contract completion date, Contractor shall furnish such justification, scheduling data and supporting evidence as the SCR may deem necessary for a determination as to whether or not the Contractor

is entitled to an extension of time under the provisions of the contract.

- (b) The SCR's determination as to the total number of days of contract extension shall be based upon the current schedule at the time of the alleged delay and all other relevant information. Actual delays in activities which do not affect the contract completion date will not be the basis for extending the contract completion date. In order to justify an extension of the contract completion date, the alleged delay must extend the duration of a critical activity which extends the contract completion date. The SCR shall, within a reasonable time after receipt of such justification and supporting evidence, review the facts and shall advise the Contractor, in writing thereof.

CLAUSE A50 - RELEASE OF INFORMATION

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

CLAUSE A51 - AUTHORIZATION AND CONSENT

This clause is not applicable where both complete performance and delivery are outside the United States, its possessions or Puerto Rico.

- (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the SCR directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design and testing services) expected to exceed \$25,000; however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.

CLAUSE A53 - SANDIA PROVIDED INFORMATION

- (a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto (hereinafter called "material"), furnished by

Sandia to the Contractor shall remain the property of the Government.

- (b) If any material furnished by Sandia to the Contractor is of special significance in the sense that its use by the Contractor for other than performance of this contract or its disclosure to others might give competitive advantage to the Contractor or the recipient or be prejudicial to the best interests of the Government, then such material shall be used only for the purpose of enabling performance of this contract and the Contractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this contract.
- (c) Technical data, as defined in DEAR Subpart 927.401, may contain patentable or proprietary information and is not to be disclosed to others or used for other than quotation purposes or contract performance.

CLAUSE A60 - PROPERTY

This clause is applicable if this contract provides (i) that Sandia will furnish Government-owned property to the Contractor (hereinafter referred to as "Sandia-furnished property") or (ii) that the Contractor will acquire property title to which vests in the Government.

- (a) Sandia-Furnished Property
- (1) Sandia shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Sandia-furnished property described in Section I together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Sandia-furnished property").
- (2) The delivery or performance dates for this contract are based upon the expectation that Sandia-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in Section I or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
- (3) If Sandia-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the SCR, detailing the facts, and, as directed by the SCR and at Sandia expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the SCR shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (4) If Sandia-furnished property is not delivered to the Contractor by the required time, the SCR shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (b) Changes in Sandia-furnished Property
- (1) The SCR may, by written notice, (i) decrease the Sandia-furnished property provided or to be provided under this

contract, or (ii) substitute other Sandia-furnished property for the property to be provided by Sandia, or to be acquired by the Contractor for Sandia, under this contract. The Contractor shall promptly take such action as the SCR may direct regarding the removal, shipment, or disposal of the property covered by such notice.

material or its use in contract performance; or

(C) Reimbursement of the cost of the material by Sandia, whichever occurs first.

(2) Upon the Contractor's written request, the SCR shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if Sandia has agreed in Section I to make the property available for performing this contract and there is any:

(d) Use of Government Property

The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the SCR.

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(e) Property Administration

(1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with FAR Subpart 45.5 and DEAR Subpart 945.5, as in effect on the date of this contract.

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of FAR Subpart 45.5 and DEAR Subpart 945.5.

(c) Title in Property

(1) The Government shall retain title to all Sandia-furnished property.

(3) If damage occurs to Government property, the risk of which has been assumed by Sandia under this contract, Sandia shall replace the items or the Contractor shall make such repairs as Sandia directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the SCR. When any property for which Sandia is responsible is replaced or repaired, the SCR shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(2) All Sandia-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which Sandia is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for Sandia under this contract shall pass to and vest in the Government when its use in performing this contract commences or when Sandia has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(f) Access

Sandia, or the Government, and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(4) If this contract contains a provision directing the Contractor to purchase material for which Sandia will reimburse the Contractor as a direct item of cost under this contract:

(g) Risk of Loss

Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon:

(h) Equitable Adjustment

When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the

procedures of the Changes clause. When appropriate, the SCR may initiate an equitable adjustment in favor of Sandia. The right to an equitable adjustment shall be the Contractor's exclusive remedy. Neither Sandia or the Government, either jointly or severally, shall be liable to suit for breach of contract for:

- (1) Any delay in delivery of Sandia-furnished property;
- (2) Delivery of Sandia-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Sandia-furnished property; or
- (4) Failure to repair or replace Government property for which Sandia or the Government is responsible.

(i) Final Accounting and Disposition of Government Property

Upon completing this contract, or at such earlier dates as may be fixed by the SCR, the Contractor shall submit, in a form acceptable to the SCR, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to Sandia. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the SCR. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to Sandia as the SCR directs.

(j) Abandonment and Restoration of Contractor's Premises

Unless otherwise provided herein, Sandia:

- (1) May abandon any Government property in place, at which time all obligations of Sandia regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Sandia-furnished property (listed in Section I) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications

All communications under this clause shall be in writing.

(l) Overseas Contracts

If this contract is to be performed outside of the United States of America, its territories, or possessions, the word "Government" (wherever it appears in this clause) shall be construed as the "United States Government".

CLAUSE A61 - SPECIFICATIONS AND DRAWINGS

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at

all times give the SCR or the SCR's delegated representative(s) (SDR) access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the SCR, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The SCR shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided. Where reference is made to specifications or standards of the Government, a technical society or a testing organization, the issue of such specification or standard in effect on the effective date of this contract shall apply.

- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the SCR is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the SCR, unless otherwise expressly stated.

- (c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".

- (d) This clause will be included in all subcontracts at any tier.

CLAUSE A62 - SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Sandia or the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Sandia.

(b) Sandia and the Government, either jointly or severally, assume no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by Sandia or the Government. Nor does Sandia and the Government, either jointly or severally, assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of their officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

CLAUSE A63 - DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the SCR of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The SCR shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the SCR.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

CLAUSE A64 - OPERATIONS, DISMANTLED EQUIPMENT AND MATERIAL, UTILITIES AND STORAGE AREAS

- (a) Operations
- The Contractor shall confine all operations (including storage of materials) on Sandia-controlled premises to areas authorized or approved by the SCR. The Contractor shall hold and save Sandia and the Government, their officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- (b) Storage Areas
- Temporary buildings (e.g., storage sheds, shops, offices, sanitation facilities) and utilities may be erected by the Contractor only with the approval of the SCR and shall be built with labor and material furnished by the Contractor without expense to Sandia. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the SCR, the buildings and utilities may be abandoned and need not be removed.

(c) Use of Roadways

The Contractor shall, under regulations prescribed by the SCR, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the SCR. The Contractor may close streets and remove signs and other material and structures when authorized by the SCR. The Contractor shall provide and keep in place barricades, signs, markers, flares, and other devices required by the SCR for traffic control and safety. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(d) Utilities

The Contractor shall provide all necessary utilities at the work site unless use of existing utilities at the work site is approved in advance by the SCR.

(e) Dismantled Equipment and Material

Dismantled equipment and material removed from the work site shall remain the property of the Government. If the dismantled equipment and material is not reused in the performance of this contract, the Contractor shall (i) label or tag large items and package small items; (ii) prepare an inventory in triplicate on Sandia-furnished forms; and (iii) deliver the dismantled equipment and material to a location designated by the SCR.

(f) Clean Up

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work area and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Sandia or the Government. If the contract requires the modification of areas within buildings or the movement or relocation of furniture or equipment, the Contractor will vacuum and/or sweep and wet mop the area before moving in furniture or equipment and after the move is complete. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the SCR or the SDR.

CLAUSE A65 - PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, IMPROVEMENTS, MATERIALS AND WORK

- (a) The Contractor shall preserve and protect all structures, equipment, traffic signs, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.
- (b) The Contractor shall protect from damage or interruption of service all existing improvements and utilities, including underground property or underground utilities the location of which are properly indicated in the specifications and/or drawings, or the existence of which is otherwise made known to the Contractor by written notice

signed by the SCR, or the locations of which should be known by the Contractor, (1) at or near the work site and (2) on adjacent property of a third party. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the SCR may have the necessary work performed and charge the cost to the Contractor.

- (c) Contractor shall preserve and protect all work performed under this contract, materials, supplies, and equipment of every description, including property which may be Sandia-furnished or Government-owned.
- (d) Contractor immediately shall repair all damage, caused by Contractor's work under this contract, to any utilities, the existence of which (1) is not made known by written notice signed by the SCR, (2) is not indicated in the specifications and/or drawings, or (3) could not reasonably have been known by the Contractor. Contractor shall submit a claim for and enter into good faith negotiations to arrive at a fair price for such repair work. Upon written request of the Contractor, the SCR shall determine the extent that contract performance was delayed to make the required repairs, and the SCR shall modify the contract performance date accordingly.

CLAUSE A66 - MATERIAL AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the SCR, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) The Contractor shall obtain the SCR's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the SCR the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the SCR, the Contractor shall also obtain the SCR's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

CLAUSE A67 - (I) SAFETY, HEALTH, ENVIRONMENT, PROPERTY AND FIRE PROTECTION; (II) ACCESS TO SANDIA OR GOVERNMENT-CONTROLLED PREMISES; (III) LIABILITY; (IV) CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES; (V) OTHER SAFETY PROVISIONS

All provisions of this Clause shall apply when the work to be performed under this contract requires Contractor or Subcontractors to have access to Sandia or Government-controlled premises, or to operate Government-owned vehicles. The Contractor shall comply with the provisions set forth in Paragraphs (I) through (IV) of this Clause and shall include the provisions of this Clause including this preamble in any subcontracts of any tier. The Contractor shall be responsible for compliance by any subcontractor of any tier or lower tier subcontractor with the provisions of this Clause.

I. SAFETY, HEALTH, ENVIRONMENT, PROPERTY AND FIRE PROTECTION

- (a) The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the environment and the property, safety and health of Contractors, Sandia and DOE employees, visitors to Sandia and members of the public, and shall comply with all applicable environmental, safety and health laws, rules and regulations, as amended, of the Federal, State, and local governments and DOE and Sandia. These rules and regulations include but are not limited to the (i) Clean Air Act; (ii) Clean Water Act; (iii) Resource Conservation and Recovery Act; (iv) Comprehensive Environmental Response, Compensation, and Liability Act; (v) Hazardous and Solid Waste Act; (vi) Toxic Substance Control Act; (vii) Emergency Planning and Community Right-to-Know Act; (viii) Federal Insecticide, Fungicide and Rodenticide Act; (ix) Safe Drinking Water Act; (x) Occupational Safety and Health Act; (xi) Hazardous Materials Transportation Act; and (xii) DOE Orders 1540.1, 4300.1B, 5000.3A, 5440.1D, 5480.4, 5480.16, 5482.1B, 5483.1A, 5484.1, 5820.2A, and 5480.1B, as amended.
- (b) The Contractor shall determine and strictly adhere to any safety rules, regulations, access restrictions and emergency egress procedures which are unique to the Contractor's Sandia work location. These unique rules, regulations, access restrictions and emergency egress procedures shall be determined through consultation with the Sandia Delegated Representative or the Sandia Contracting Representative (SCR).
- (c) Contraband and Prohibited Item
Contractor shall inform all of its employees and sub-contractors that the possession, use or sale of non-prescription drugs or narcotics considered dangerous or illegal by the U.S. Department of Justice, or the possession, consumption, or use of intoxicants, such as alcoholic beverages, or being under the influence of dangerous drugs, narcotics, or intoxicants, is strictly prohibited.
- (d) The Contractor shall notify either the SCR or the SDR as soon as possible if an incident or accident violating any rule or regulation described in Paragraph (a) herein occurs; furthermore, if the incident or accident results in an injury to any person, Contractor shall complete Sandia Form SF 2050-PC, "Contractors/Visitors Report of Occupational Occurrences" and send the completed form to the SCR or the SDR.
- (e) On all SDR occurrences, as defined in DOE Order 5000.3A, the Contractor shall call the SDR, and cooperate in preparing and submitting a written description of such occurrence to the DOE in accordance with DOE Order 5000.3A. Unusual occurrences are those events which could have (i) resulted in serious injury or substantial property loss, (ii) programmatic significance, or (iii) actual or potential public or news media interest.

(f) In the event that the Contractor fails to comply with any law, rule or regulation described in Paragraph (a) herein, the SCR may, without prejudice to any other legal or contractual rights of Sandia, issue an order stopping all or any part of the work under the contract; thereafter a start work order for resumption of work may be issued at the discretion of the SCR. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of/or in connection with such work stoppage.

II. ACCESS TO SANDIA OR GOVERNMENT-CONTROLLED PREMISES

(a) Permission to enter Sandia or Government-controlled premises shall at all times be subject to Sandia's discretion and control in accordance with its rules. The organizations listed below are responsible for coordinating and administering the provisions of this Paragraph.

(1) Sandia National Laboratories, Albuquerque, New Mexico - Visitor Access and Administration Section, Sandia Corporation, Building 801.

(2) Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, Sandia Corporation, Building 911.

(3) Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager.

(b) Personnel Access

All personnel of the Contractor and its subcontractors who require access to Sandia or Government-controlled premises in performing work under this contract are subject to security controls prescribed by the Government. All personnel of the Contractor and its subcontractors who require access must be United States citizens or foreign nationals who are legal aliens or have the required authorization to perform work in the United States. To obtain access to such premises, the Contractor shall write a letter to the Sandia Delegated Representative or the SCR stating the company designation to be used by the Contractor and each subcontractor and furnishing the following information on each individual requiring access to such premises: (i) name, (ii) date of birth, and (iii) citizenship status. Access will be granted for the period of performance of the work.

(c) Acceptance of Personnel

Contractor shall withdraw and replace any individual, including any subcontractor employee, assigned to perform work under this contract, who in the judgment of Sandia or DOE, is not qualified or desirable for such purpose.

(d) Work Schedules

The Contractor shall submit to the Sandia Delegated Representative or the SCR proposed working schedules for its personnel and the personnel of each of its subcontractors. The schedules will show proposed daily working hours and proposed work weeks. Schedules that deviate from Sandia's normal work day or work week must be approved by the responsible Sandia organization.

(e) Vehicle Markings

All vehicles used by either the Contractor or its subcontractors shall be marked clearly to indicate company name of user. Vehicles which do not bear

permanent markings may be temporarily marked as follows:

(1) Signs, no longer than the vehicle door is wide, with a white or lighter background, showing the Contractor's name in one inch high, or larger, dark colored letters, may be made from sheet metal, cardboard or other suitable material and temporarily attached to the vehicle's front door panels so that the signs appear in the approximate center of each door panel. Words such as "Company," "Corporation" or "Division" may be abbreviated.

(2) No signs shall be attached to the vehicle's glass area for safety reasons.

(f) Vehicle Insurance

All vehicles, owned or operated by the Contractor, subcontractors or their agents and employees, having access to Sandia or Government-controlled premises shall be covered by at least \$200,000/\$500,000 public liability and \$20,000 property damage insurance.

(g) Protection of Government Property

All facilities, property, equipment and materials at Sandia are Government-owned. Acts of theft, illegal possession and unlawful destruction or use of Government property violations punishable under Federal law, and may also result in administrative action. The Federal Bureau of Investigation is the investigative authority for all such incidents including cases involving the personal property of individuals when the incident occurs at a Government-owned installation. Every user of Government property is responsible for its physical protection and for reporting immediately the loss, theft, destruction, or damage of such property.

(h) Use of Sandia or Government-Controlled Premises

In the absence of a written authorization from the SCR or DOE, use of Sandia or Government-controlled premises by the Contractor and its subcontractors of any tier, pursuant to access granted under this Clause, shall be limited to work required by this contract to be performed on such premises. THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THIS CONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS CONTRACT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE UNDER PARAGRAPH II(C) OF THIS CLAUSE.

(i) Notice Requirements for Employees Terminated or Reassigned by the Contractor

The Contractor shall (i) notify immediately the SCR and the Sandia Personnel Security Department at Albuquerque (Sandia Physical Security Department at Livermore; Tonopah Test Range Manager at Tonopah) if any Contractor employees assigned to work under this contract are terminated for any reason or are assigned to other Contractor non-Sandia work and will not work under this contract in the future, and (ii) ensure that any Contractor employees identified under this paragraph surrender to the Sandia Personnel Security Department at Albuquerque (Sandia Physical Security Department at Livermore; Tonopah Test Range Manager at Tonopah) any Sandia badge, Kirtland Air Force Base decals or other access documents within five days of termination or reassignment.

III. LIABILITY

The following provisions apply to all contracts/orders except those awarded under Federal Supply Schedule contracts.

- (a) The Contractor shall comply, at the Contractor's own expense, with all Federal, State, County and Municipal laws, ordinances and regulations, if any, applicable to the work under this contract, and before starting work, to secure all local and/or state licenses or permits required for the performance of the work. Contractor shall save Sandia and the Government harmless from all damages of any nature whatsoever that Sandia or the Government may suffer as a result of Contractor's failure to do so.
- (b) All agents or employees furnished by Contractor for the performance of work under this contract shall, at all times and for all intents and purposes, be considered as Contractor's agents or employees, and Contractor shall be responsible for maintaining at all times suitable worker's compensation and occupational disease insurance, or self-insurance as permitted by law, covering each person whose services are furnished under this contract. Contractor shall assume full responsibility for and agrees to indemnify and save Sandia and the Government harmless from all losses, liability and expenses, including attorney's fees, on account of injuries or accidents covered by laws concerning worker's compensation and occupational disease for persons providing services under this contract, or accidents, injuries or damage to property occurring to Contractor's agents or employees or others (including Sandia, DOE, and their agents and employees) by reason of any negligent or willful acts or omissions of Contractor's agents or employees.
- (c) Contractor shall carry suitable worker's compensation and occupational disease, public liability and property damage insurance, and shall, if requested, furnish the SCR with certificates evidencing this insurance or satisfactory proof of self-insurance.

The certificates shall each contain a provision that no cancellation or change in such insurance shall become effective except upon thirty (30) days advance written notice to Sandia. Cancellation of any insurance called for under this paragraph shall not relieve Contractor of its obligation to carry the coverage involved.
- (d) Contractor shall, if requested, assume at its own expense the defense of suits that may be instituted against Sandia or the Government on account of Contractor's failure to conform to laws as hereinabove required or on account of accidents, injuries or property damage referred to in Paragraph (b) above.
- (e) The Contractor certifies by acceptance of this contract that all work performed hereunder shall be in compliance with the applicable health and safety requirements, and pursuant to this Clause of the contract, agrees to indemnify and save Sandia and the Government harmless from all liability and expenses, including attorneys' fees, on the account of the Contractor's failure to comply with such health and safety requirements.

IV. CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

The following provisions apply if work under this contract requires Contractor or subcontractor

personnel to operate Government-owned vehicles either on or off Sandia or Government-controlled premises.

- (a) Contractor shall maintain, at Contractor's expense, during the period of performance of work under this contract, third-party vehicle liability insurance which shall cover the use of such Government-owned vehicles with limits of at least \$200,000/ \$500,000 public liability and \$20,000 property damage. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be required under this Clause unless required by State statute.
- (b) All Contractor's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of Government-owned vehicles.
- (c) In the event of a motor vehicle accident, the Contractor shall submit a completed Motor Vehicle Accident Reporting Form SF 91 to the SCR together with any additional supplemental forms required by instructions given on the GSA Form Packet 1627. A GSA Form Packet 1627 normally is located either in the headliner or glovebox of the GSA vehicle. Contractor's personnel shall assure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

V. OTHER SAFETY PROVISIONS

- (a) Safety Plan

Contractor shall submit a safety plan prior to beginning work under the contract or have such a plan on file at Sandia. Contractor certifies by acceptance of this contract that such safety plan is applicable to the work to be performed under the contract and that such safety plan is in compliance with the Occupational Safety and Health Administration (OSHA) safety and health standards for construction issued by the Secretary of Labor, and any safety and health standards set forth in this contract.
- (b) Reports
 - (1) The Contractor shall file with the Division of Operations Safety, DOE Albuquerque Operations Office, a copy of all OSHA 101 and 102 reports required by the Department of Labor which cover the period of time during which work under this contract is performed.
 - (2) The Contractor shall report all incidents to the SCR which involve damage to equipment or facilities, or personal injuries requiring medical attention in excess of first aid.
- (c) Safety Officer

The Contractor shall designate an employee as a Safety Officer on the work site who shall be responsible for implementation and supervision of all laws, rules and regulations cited in this Clause A 67.
- (d) Hazard Identification

The Contractor shall provide and maintain appropriate signs and barricades to warn personnel of construction hazards. Hazardous areas or conditions requiring marking include, but are not limited to, safety glasses areas, hard hat areas, high-pressure areas, areas with overhead work, open excavation areas, loading limits, nonpotable

water, high-voltage, explosive hazards, flammable hazards, floor opening hazards, open-sided platforms, hearing hazards, sandblasting and welding or cutting flash hazards.

(e) Use of Explosives

The Contractor shall obtain the written approval of the SCR or the SDR and Sandia Safety Engineering personnel prior to the use of explosives unless otherwise provided for in the contract or in the drawings and specifications.

(f) Excavation Near Street Lighting Cable

This subparagraph (f) is applicable only to work at Sandia Laboratories premises, Kirtland AFB.

The Contractor shall request an outage of the series street lights prior to starting any excavation in the vicinity of/or between street lighting standards. The Contractor shall then lock and tag the street lighting power switch in Building 862. The Contractor shall remove the lock and tag at the end of each day so that the power may be restored.

(g) Fire Protection

(1) Automatic Fire Sprinkler Protection

The Contractor shall keep existing automatic fire sprinkler systems in operation throughout the term of the contract unless otherwise provided in the contract or its drawings or specifications. The Contractor must obtain approval from Sandia Fire Protection Engineering personnel in advance to take portions of the system out-of-service. When the Contractor is required to take the sprinklers out-of-service, the area and duration of the impairment shall be limited to no more than one eight hour working day; and, it must be restored to service at the end of work for that day. Additional precautions taken as directed by Sandia Fire Protection Engineering personnel. The Contractor shall furnish and install nipples and caps in mains, branch lines, and drops to keep the system in operation. Contractor shall not operate Sandia sprinkler valves. Contractor shall request Sandia Facilities Operations and Maintenance personnel to operate sprinkler valves, when such operation is required.

(2) Fire Hydrants and Fire Hose

The Contractor shall keep the fire hydrants and fire hoses accessible to the Fire Department and operable at all times. The Contractor must obtain permission from Sandia Fire Protection Engineering personnel to use water from a fire hydrant. Contractor shall not operate water system valves. Contractor shall request Sandia Facilities Operations and Maintenance personnel to operate water system valves, when such operation is required.

(3) Welding, Cutting, and Hot Work

(i) The Contractor shall obtain a welding permit from Sandia Fire Protection Engineering personnel in advance of any welding, cutting, roofing tar pot, or

other hot work, including any open flame at explosive handling facilities; however, no permit is required for welding and cutting operations located outdoors at least 35 feet from the nearest brush or forest fire hazard, fuel tank, manhole, building or structure; or soldering that is not at an explosive handling facility.

(ii)

The Contractor shall require that any Contractor employee, or any subcontractor employees, performing welding, cutting, and hot work listed in paragraph (A), immediately above, at Sandia Laboratories Albuquerque only, view a 13 minute welding videotape on welding safety at Sandia, discuss the safety requirements and acknowledge that they will follow the safety requirements by signing the permit.

(iii)

The Contractor shall provide, when required, fire watchers, fire resistive welder's blankets, and metal shields. The fire watchers furnished by the Contractor shall be persons knowledgeable in the use of fire extinguishers, shall have viewed, at Sandia Laboratories Albuquerque only, a 13 minute welding videotape on welding safety at Sandia, and shall have no other duties during the welding and cutting operation which would interfere with their ability to monitor the welding and cutting. The fire watcher shall be responsible for stopping the welding and cutting, as necessary, to assure safety; actuating a fire alarm; extinguishing any fire; or taking other effective actions, as needed. The Contractor shall provide more than one fire watcher if sparks or hot slag can travel into adjoining spaces or to other floors.

(iv)

The Contractor shall relocate welding, cutting, and hot work listed in paragraph (A) above, away from combustibles or arrange for the combustibles to be relocated.

(v)

The Contractor shall use alternate means, such as mechanical cutting, when Sandia safety personnel deem that welding and cutting cannot be performed safely.

(vi)

The Contractor shall assure that all welding and cutting operations are conducted in conformance with all provision of the Safety and Health Regulations for Construction, 29 CFR 1926, Paragraphs 350 through 354.

(h) Operation of Gasoline-Powered Equipment Inside Buildings

The Contractor shall not operate any gasoline-powered equipment within any building or enclosed area during normal working hours. The Contractor may operate gasoline-powered equipment during other hours if (i) no other equipment capable of performing the job exists, (ii) the Contractor obtains approval in advance from the Fire Protection Engineering personnel and notifies the SDR or the SCR, and (iii) the Contractor insures that the ventilation and level of air contamination within the building or enclosed area comply with OSHA regulations.

(i) Sandia Area V Safety and Material Control Requirements

The requirements of this paragraph shall apply to all contract work performed in Sandia Area V on Kirtland Air Force Base.

(1) All Contractor personnel shall wear a "Dosimeter" at all times in Sandia Area V. Dosimeters will be issued to the Contractor's personnel by Sandia Security Guards as the personnel check through the entrance gate. Sandia will report to the Contractor any radiation exposure recorded on the dosimeter. The Contractor shall make this report available, upon request, to its personnel.

(2) Sandia Area V is a designated RADIATION AREA. Under normal working conditions, material, equipment, or tools will not become contaminated in this area; however, Sandia reserves the right for the Sandia Health Physics Division to perform radiation contamination checks on material, equipment or tools at appropriate intervals. Upon request from the Contractor, the Sandia Health Physics Division will perform a radiation contamination check on any material, equipment, or tools belonging to the Contractor. If radioactive contamination is found, the Sandia Health Physics Division will work with the Contractor to assure that the item is decontaminated before it is removed from the Area.

(3) The Contractor shall comply with all signs and barriers designating areas as exclusion areas within the reactor complex. The Contractor shall obtain a copy of the Sandia Area V Standard Evacuation Procedures, to be used in case of an emergency, from the Sandia Area V Reactor Development Application Department, and assure that all of the Contractor's personnel assigned to work in Sandia Area V become familiar with and are instructed to comply with the Sandia Area V Standard Evacuation Procedures.

(4) Sandia Area V contains designated RADIATION AREAS. Levels of radiation exposure within this area are monitored by the Sandia Health Physics Division. Contractor's personnel will not be prevented from performing work under this contract if the radiation levels do not exceed administrative limits established by Sandia; however, if (i) Sandia is required to perform maintenance in Area V, (ii) an emergency occurs, or (iii) the levels of radiation exceed the administrative limits established by Sandia, the Sandia Health Physics Division may restrict Contractor's access to one or more locations within Area V

and/or suspend Contractor's work within Area V. Contractor claims arising under this paragraph (iv) shall be in accordance with Clause A42 entitled "Suspension of Work" herein.

(j) Bulletin Boards

Contractor shall maintain, at or in the vicinity of the work site, a project bulletin board for posting, at a minimum, the following: (i) Emergency Instruction, (ii) Equal Opportunity Poster, (iii) Applicable Wage Decision(s), and (iv) Contractor's Safety Requirements. For projects of significant duration, the Contractor shall install and maintain a weatherproof or protected bulletin board approximately three feet high by five feet long at the work site during the period of performance of this contract.

(k) Storage Facilities

This subparagraph (k) is applicable to work only at Sandia Laboratories, Kirtland AFB.

Sandia may permit Contractor to use, on a space available basis, an unprotected storage yard located in Sandia Tech Area I, east of Building 887, or other suitable storage area on Kirtland AFB, at no charge to the Contractor. Neither Sandia nor the Government shall be liable to the Contractor for loss of or damage to Contractor-owned property or material located in such storage areas.

(l) Field Dimensions and Survey

The Contractor shall lay out work from dimensions, control points and grades established on drawings, and shall be responsible for all measurements in connection therewith. The Contractor will be held responsible for the proper execution of the work to such lines and grades without regard to assistance given by others to the Contractor.

(m) Special Security Requirements

Work in Sandia Security Areas will be performed by L or Q-cleared personnel or personnel under escort of the Sandia Security Guards. The Contractor shall send a list, in accordance with Paragraph (b)(2) of this clause, to the SDR or the SCR showing the name of each Contractor employee who will perform work under this contract in a Sandia Security Area. The Contractor shall certify that each Contractor employee shown on this list is a U.S. Citizen or foreign nationals who are legal aliens or have the required authorization to perform work in the United States. The Contractor may add or delete names from this list provided that each addition or deletion is initialed and dated by the Contractor or its designated representative.

(n) Security Escort Services

The Contractor shall arrange for security escort services for all uncleared workmen by calling the SDR 48 hours prior to the time the escort service is required. The Contractor shall notify the SDR as early as possible when prearranged escort services are not required.

(o) Preconstruction Conference

Contractor agrees to participate in a preconstruction conference, if requested to so do by the SCR. This conference may take the form of either (i) an informal conference between Sandia's Construction Inspector and the Contractor's Superintendent to discuss technical issues and job

safety objectives, or (ii) a formal conference between Contractor and Sandia management to discuss technical issues, administration of the contract, and job safety objectives. Management representatives from the Contractor and all of its subcontractors shall attend the formal conference. Both the informal and formal conference will be held at a location convenient to the job site.

(p) Sandia-Furnished Material and Facilities

If this contract includes a "Sandia-Furnished Materials and/or Facilities List", such listed materials and/or facilities will be furnished at no charge to the Contractor at a warehouse or storage area on Sandia premises, unless otherwise specified. These materials and/or facilities are for use only on work performed under this contract. Excess material will be returned to Sandia. All other materials and/or facilities not specifically mentioned in this contract or in specifications, drawings and lists incorporated into and made a part of this contract, will be furnished by the Contractor. The Contractor shall be responsible for all operations connected with moving the materials to the job site unless other arrangements are made with the SCR or the SDR. The Contractor shall devote the same effort in installing Sandia-furnished equipment as for Contractor-furnished equipment. The Contractor shall perform activities such as unpacking, removing all shipping bolts and blocking, assembling, adjusting, lubricating, aligning, performing all prestart checks as recommended by the manufacturer of the equipment, and providing complete cleanup and touch up painting for all Sandia-furnished equipment. Manufacturer's installation instructions and descriptive information such as operating guides, servicing manuals and the like, shall be made available to the SDR on request. The Contractor shall inspect all material and/or equipment and shall promptly report any damage or shortages to the SCR.

(q) Personal Protective Equipment

The Contractor shall furnish to his employees and require the use of personal protective equipment as needed. This equipment includes, but is not limited to, hard hats, gloves, eye protection, respirators, protective equipment and hearing protection devices. The Contractor is responsible for ensuring that Contractor's employees properly use and maintain this equipment.

CLAUSE A68 - SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the SCR and has authority to act for the Contractor.

CLAUSE A69 - MANUFACTURING AND TESTING STANDARDS

(a) Unless excluded or modified elsewhere in this contract/order, Contractor warrants that all equipment, components, fasteners, tools and products of any nature whatsoever, furnished under this contract, shall be manufactured and/or tested in accordance with standards normally associated with such items when they are sold to users in the United States. Examples of such manufacturing and/or testing standards include, but are not limited to:

- Underwriter's Laboratory (UL) Listing
- National Fire Protection Association Approval

- Occupational Safety and Health Act (OSHA) Approval
- American Society for Testing Material (ASTM) Certification
- Nationally Recognized Testing Laboratory (NRTL) Approvals

(b) All items furnished under this contract shall be clearly marked and/or labeled, as appropriate; and, if applicable, all items shall be accompanied by installation and/or operating instruction normally associated with such items.

CLAUSE A73 - WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If Sandia or the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date Sandia or the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Sandia or Government-owned or controlled real or personal property, when that damage is the result of:

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The SCR shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Sandia shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of Sandia or the Government, if directed by the SCR; and
- (3) Enforce all warranties for the benefit of Sandia or the Government, if directed by the SCR.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, Sandia

or the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by Sandia or the Government nor for the repair of any damage that results from any defect in Sandia-furnished or Government-furnished material or design.
- (j) This warranty shall not limit Sandia's or the Government's rights under the Inspection of Construction clause of this contract with respect to latent defects, gross mistakes, or fraud.

CLAUSE A78 - OPEN BIDDING ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS

- I. Contractor shall comply with Executive Order 12818 and shall not -
 - (a) Require prospective or actual subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
 - (b) Otherwise discriminate against prospective or actual subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
 - (c) Require any prospective or actual subcontractor to enter into, adhere to, or enforce any agreement that requires its employees, as a condition of employment, to-
 - (i) Become members of or affiliated with a labor organization; or
 - (ii) Pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share of labor organization costs relating to collective bargaining, contract administration, or grievance adjustment.
- II. This clause does not prohibit a Contractor or subcontractor from voluntarily entering into an otherwise lawful agreement with a labor organization regarding its own employees.
- III. If the Contractor does not perform in accordance with this clause, the Government may suspend or debar the contractor, terminate the contract for default in whole or in part, and withhold payment.
- IV. The Contractor and any subcontractor shall include this clause in every subcontract entered into in connection with this contract.

CLAUSE A80 - SANDIA POLICY ON EQUAL OPPORTUNITY

Sandia is committed to equal opportunity. This policy extends to all of our activities including recruiting, employment, compensation, training, advancement, promotion, transfer, and termination without regard to race, color, religion, national origin, or sex, and in accordance with the laws and regulations concerning age, physical or mental handicap, and disabled or Vietnam Era veterans. Members of various religious and/or ethnic groups receive fair consideration for job opportunities. Sandia recognizes the need for affirmative action in filling executive, middle

management and other job levels with members of various religious groups associated with an ethnic origin who continue to be excluded from such positions because of discrimination based on religion and/or national origin. We also accommodate to the religious observances and practices of employees and prospective employees where that accommodation is reasonable and does not pose undue hardship on the conduct of company business. It is against the policy of Sandia for any employee or agent to harass another employee by making unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature. Any such conduct which creates an intimidating, hostile or offensive working environment is absolutely prohibited. Sandia will comply with all applicable laws, directives, and regulations of federal and state governments and their agencies pertaining to equal employment opportunities. The Contractor is requested to support this policy.

CLAUSE A81 - SUBSTANCE ABUSE PREVENTION AND TESTING

A. DRUG-FREE WORK PLACE

Sandia is committed to providing a safe working environment and to maintaining the security of our mission. Toward that end, each individual working on a Sandia project is entrusted to avoid misusing or abusing alcohol or licit drugs, and to abstain from using illicit drugs or intoxicants. Violation of this trust can result in removal from the contract, contract termination for default, and/or appropriate legal consequences.

Buying, selling, using, or possessing illegal drugs such as depressants, hallucinogens, or any other illegal substance is prohibited by law. Therefore, no individual working on Sandia projects may buy, sell, use, or possess illegal drugs such as depressants, stimulants, hallucinogens, and other illegal substances either on or off Sandia premises. The use or possession of alcohol on Sandia premises, or inappropriate use of alcohol while on Sandia business is similarly prohibited. Drug-related paraphernalia are not permitted on Kirtland Air Force Base or on any Sandia-controlled premises.

Any use of drugs (including misuse of prescribed substances) or alcohol that affects and individual's ability to perform his/her job can result in removal of the individual from the contracts and/or other corrective action including contract termination for default.

Sandia reserves the right to require any individual on Sandia premises to cooperate in testing for the use of illegal drugs or misuse of alcohol where there appears to be cause for such testing. Those individuals identified as having a problem related to substance abuse may be removed from performance of work under the contract.

B. PREASSIGNMENT DRUG TESTING

All Contractor personnel who have a requirement for independent access to sites controlled by Sandia National Laboratories and are requested to obtain an individualized Sandia contractor badge must be tested for illegal drugs.

These tests can either be conducted as part of the contractors normal preemployment screening process or if the contractor does not require preemployment drug testing it must be conducted within 30 days of Sandia's request for such testing. Testing should conform with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Department of Health and Human Services (HHS), 53 FR 11970, April 11, 1988 and subsequent amendments thereto. Alternates to the above referenced testing guidelines must be submitted to and approved by the SCR in writing.

Within 45 days after Sandia's request the Contractor must submit a written certification in a form acceptable to the SCR identifying the individual by name and social security number and certifying that the individual has undergone the

preassignment drug testing required under this clause and indicating the results of those tests. This certification must be signed by a principal or officer authorized to contractually obligate the Contractor. All costs associated with this preassignment testing are to be borne by the Contractor.

Any individual with a confirmed positive test may not be assigned to perform work at a Sandia controlled premises for a period of at least one year from the date of the confirmed test results. Assignment for work at Sandia controlled premises after the one year is contingent upon submission of evidence acceptable to the SCR of appropriate evaluation and treatment and documented abstinence from drugs including the misuse of prescribed substances for a period of 12 months. Contractor employees who do not consent to a Sandia requested drug test provided for under this Clause or other provisions of this contract (if any), must be removed from Sandia controlled premises and any further performance of work under the contract. Elimination of personnel under this clause will not be deemed to be an excusable delay or a termination for convenience on the part of Sandia.

C. APPLICATION TO LOWER TIER CONTRACTORS

The Contractor shall insert a clause containing all the provisions of this clause with the parties appropriately identified, including this paragraph, in all subcontracts where the subcontractor at any tier is to have access to Sandia-controlled premises.

CLAUSE A97 - HAZARDOUS MATERIAL IDENTIFICATIONS AND MATERIAL SAFETY DATA

- (a) The Contractor agrees to submit a Material Safety Data Sheet (MSDS) (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material delivered under this contract, whether or not listed in Appendix A of the Standard. The MSDS shall accompany each item being delivered. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- (c) Neither the requirements of this clause nor any act or failure to act by Sandia or the Government shall relieve the Contractor of any responsibility or liability for the safety of Sandia, Government, Contractor, or subcontractor personnel or property.
- (d) 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.
- (e) Sandia's and 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 (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for

Sandia or the Government for these purposes.

- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.
- (3) That Sandia or the Government is not precluded from using similar or identical data acquired from other sources.
- (4) That the data shall not be duplicated, disclosed, or released outside Sandia or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies--

"This is furnished under United States Government Contract No.and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of..... This legend shall be marked on any reproduction of this data."
(End of legend)

- (5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to Sandia or the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-14, Rights in Data--General.
- (f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

CLAUSE A98 - SECURITY

I. CONTRACTOR'S DUTY TO SAFEGUARD ALL CLASSIFIED INFORMATION

The Contractor shall, in accordance with DOE's security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss and theft, the classified documents and material to which the Contractor has access.

- (a) Regulations. The Contractor agrees to conform to all security regulations and requirements of the DOE.
- (b) Definitions
 - (1) Classified Information. The term "classified information," as used in this Clause, means Restricted Data, Formerly Restricted Data, and National Security Information.
 - (2) Restricted Data. The term "Restricted Data," as used in this Clause, means all data concerning (i) design, manufacture, or utilization of atomic weapons; (ii) the production of special nuclear material; or (iii) 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.

- (3) Formerly Restricted Data. The term "Formerly Restricted Data," as used in this Clause, means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (4) National Security Information. The term "National Security Information," as used in this Clause, means information or material which is owned by, produced for or by, or under the control of the United States Government, which has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

- (c) 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 Executive Order 12356.)
- (d) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the SCR, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.
- (e) It has been determined that the Contractor does not have a need-to-know or a need to have access to specific classified information or material to perform the work required under this contract. In the event the Contractor believes there is a need-to-know or is presented with classified information or material in the performance of its work, the Contractor shall immediately notify the SCR.

Clause A99 - Additional Terms and Conditions

This document incorporates the following Federal Acquisition Regulation (FAR) or Department of Energy Acquisition Regulation (DEAR) clauses by references with the same force and effect as if they were given in full text. In general, where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute Sandia and Sandia Contracting Representative (SCR). Upon request the SCR will make the full text available.

The following clause applies to contracts at any value:

FAR 52.203-1 - Officials not to Benefit
FAR 52.203-6 - Restrictions on Subcontractor Sales to the Government
FAR 52.222-3 - Convict Labor
FAR 52.207 - Anti Kickback Procedures
FAR 52.223-2 - Clean Air and Water
FAR 52.203-3 - Gratuities
DEAR 952.250-70 - Nuclear Hazards Indemnity Agreement
DEAR 970.5204-59 - Whistleblower Protection

The following clause applies to contracts exceeding \$2,500:

FAR 52.222-36 - Affirmative Action for Handicapped Workers

The following clauses apply to contracts that exceed \$10,000:

FAR 52.222-26 - Equal Opportunity
FAR 52.219-8 - Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
FAR 52.222-20 - Walsh Healy Public Contracts Act
FAR 52.222-35 - Affirmative Action for Special Disabled and Vietnam Era Veterans
FAR 52.222-37 - Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
DEAR 970.5203-1 - Covenant Against Contingent Fees
DEAR 970.5203-2 - Examination of Records by the Comptroller General
DEAR 970.5203-3 - Buy American Act
DEAR 970.5204-62 - Environmental Protection

"B" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$2,000

CLAUSE B10 - DAVIS-BACON ACT

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (1) The SCR shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The SCR shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

CLAUSE B11 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the SCR agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the SCR, through DOE, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the SCR or will notify the SCR within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the SCR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the SCR shall refer the questions, including the views of all interested parties and the recommendation of the SCR, through DOE, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the SCR or will notify the SCR within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraph (b)(2) and (b)(3) of this clause shall be paid for all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met.

(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 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 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 mechanics 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 SCR 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 Sandia Contract with the same 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 mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, 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 representative of the SCR 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 the provisions set forth in paragraphs (a) through (e) of this clause.

CLAUSE B12 - WITHHOLDING OF FUNDS

The SCR 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 the Contractor under this contract or any other Sandia contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SCR may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

CLAUSE B13 - PAYROLLS AND BASIC RECORDS

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls, including the payrolls of all subcontractors, to the SCR. The payrolls

submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Form WH-347 that is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 may be used to meet this requirement.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the SCR or authorized representatives of the SCR or the Department of Labor. The Contractor or subcontractor shall permit the SCR or representatives of the SCR or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the SCR may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments. Furthermore, failure to submit the required records upon request or to make such records available may be

grounds for debarment action pursuant to 29 CFR 5.12.

CLAUSE B14 - APPRENTICES AND TRAINEES

(a) Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the

Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal Employment Opportunity

The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, and 29 CFR Part 30.

CLAUSE B15 - COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

CLAUSE B16 - SUBCONTRACTS (LABOR STANDARDS)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination - Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations and Certification of Eligibility, and such other clauses as the SCR may, by appropriate instruction, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the SCR a completed statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the SCR an updated completed SF 1413 for such additional subcontract.

CLAUSE B17 - CONTRACT TERMINATION - DEBARMENT

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

CLAUSE B18 - COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

CLAUSE B19 - DISPUTES CONCERNING LABOR STANDARDS

The U. S. Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause, if any, of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and Sandia, the U. S. Department of Labor, or the employees or their representatives.

CLAUSE B20 - CERTIFICATE OF ELIGIBILITY

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted by any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

"D" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$10,000

CLAUSE D12 - AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

- (a) Definitions of Terms used in this Clause
- "Covered area," means the geographical area described in the solicitation for this contract.
- "Director," means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- "Employer identification number," means the Federal Social Security number used on the

employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," means:

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.)
- (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
- (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.)

- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated herein: [The goals and timetables for minority and female participation in each trade are expressed as percentages of the Contractor's aggregate workforce.]

Timetable - until further notice

Covered Area	Minority	Female
Bernalillo County, NM	38.3	6.9
Alameda County, CA	25.6	6.9
NTS/TTR, NV	12.6	6.9

- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U. S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity Clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

- (d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training program approved by the U. S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
 - (4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
- (6) Disseminate the Contractor's equal employment policy by:
- (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;
 - (iii) Publicizing the policy in the company newspaper, annual report, etc.,
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date of acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the

- openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor:
- (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (i) A single goal for minorities and a separate single goal for women should be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
 - (j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
 - (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
 - (l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.
 - (m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirement of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.
 - (n) The Contractor shall designate a responsible official to:
 - (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by Sandia or the Government;
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanical, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
 - (o) Nothing contained herein shall be construed as a limitation upon the application of other laws that

establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- (3) If work is performed in Nevada:
 - (i) Send Standard Form 257:

U. S. Department of Labor (DOL)
Office of Federal Contract Compliance Programs (OFCCP)
Suite 303
3221 North 16th Street
Phoenix, Arizona 8501

The forms for this Report are available from a Department of Labor office listed above.

CLAUSE D41 - REPORTING OF ROYALTIES

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

- (c) The reports shall reflect the Contractor's aggregate work force (Contractor's total work force including federally funded/assisted and nonfederally funded work in all crafts on all construction work). The reporting period of these monthly reports shall be as agreed upon by the OFCCP. All final reports submitted under this Clause shall be labeled "FINAL REPORT FOR CONTRACTS/SUBCONTRACTS COMPLETED."

- (d) If the Contractor or a subcontractor fails to submit reports as required herein, OFCCP may immediately issue a Show Cause Notice indicating the Contractor or subcontractor is in noncompliance for failure to submit the required information.

CLAUSE D42 - PATENT INDEMNITY - CONSTRUCTION CONTRACTS

Except as otherwise provided, the Contractor agrees to indemnify Sandia and the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon 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 under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of Sandia or the Government of supplies furnished or work performed under this contract.

- (e) The Contractor and any subcontractor, of any tier, shall provide access to books, records and documentary evidence of good faith efforts to DOE and/or OFCCP for the purpose of conducting a compliance review.

- (f) The Contractor agrees to include this clause and clauses entitled "Affirmative Action Compliance Requirements for Construction" and "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" in all of Contractor's Requests for Quotation and resultant construction subcontracts, of any tier, in excess of \$10,000.

CLAUSE D53 - AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

- (a) The Contractor shall submit a monthly, consolidated Employment Utilization Report on Standard Form 257, for itself and for all its subcontractors, of any tier; provided, however, that no report is required for subcontracts for \$10,000 or less.

- (b) The Employment Utilization Report on Standard Form 257 shall be mailed on the first day of each month to the following addresses:

- (1) If work is performed in New Mexico:
 - (i) Send Standard Form 257 to:

U. S. Department of Labor (DOL)
Office of Federal Contract Compliance Programs (OFCCP)
Room 320
320 Central Avenue, S.W.
Albuquerque, New Mexico 87102

- (2) If work is performed in California:

Send Standard Form 257 to:

U. S. Department of Labor (DOL)
Office of Federal Contract Compliance Programs (OFCCP)
Room 702
1401 Lakeside Drive
Oakland, California 94612

"E" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS VALUED OVER \$25,000

CLAUSE E11 - BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, 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, 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.

CLAUSE E21 - ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect Sandia and Government and persons supplying labor or materials under this contract if:

- (a) Any surety upon any bond furnished with this contract becomes unacceptable to Sandia or the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by Sandia or the Government; or

- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the SCR.

CLAUSE E22 - PAYMENT AND PERFORMANCE BONDS

- (a) The Contractor shall furnish, in connection with the performance of the work hereunder, a payment bond for the protection of persons furnishing material or labor and a performance bond for the protection of Sandia and the Government, each in a form acceptable to Sandia, with good and sufficient surety or sureties acceptable to the SCR. Bonds required hereunder shall be dated as of the effective date of this contract and shall be furnished by the Contractor to the SCR within 10 working days of the effective date of this contract and prior to starting work. The bonds shall be accompanied by a certified copy of the "Power of Attorney" document issued to the agent by the surety company.

(b) Payment Bond

- (1) The penal amount of the payment bond shall equal:
- (i) 50 percent of the contract price if the contract price is not more than \$1,000,000;
 - (ii) 40 percent of the contract price if the contract price is more than \$1,000,000 but not more than \$5,000,000; or
 - (iii) \$2,500,000 if the contract price is more than \$5,000,000.
- (2) If the original contract price is \$5,000,000 or less, Sandia may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of paragraph (1) immediately above.
- (3) When additional bonding is required pursuant to paragraph (2) above, the Contractor shall furnish additional bonding by increasing the penal sum of the existing bonds or obtaining an additional bond.

(c) Performance bonds

- (1) The penal amount of performance bonds shall be 100 percent of the original contract price.
- (2) Sandia may require additional performance bonding when the contract price is increased. The increase shall equal 100 percent of the increase in contract price.

CLAUSE E23 - PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

- (a) Sandia, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification 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 his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as

amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

- (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, Sandia 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 SCR 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 or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the SCR from records or documents in existence prior to the date of the contract award or modification.

- (c) Sandia may, at its election, reduce a 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, Sandia may terminate this contract for default. The rights and remedies of Sandia specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

"F" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS VALUED OVER \$500,000

CLAUSE F10 - CONTRACTOR/SUBCONTRACTOR CERTIFIED COST OR PRICING DATA

(This clause applies to all contracts and subcontracts, at any tier, where such contracts or subcontracts are over \$500,000, and any modification over \$500,000 to such contracts or subcontracts, even though the original amount of the contract or subcontract is \$500,000 or less)

- (a) (1) The Contractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each subcontractor, at any tier, under this contract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.
- (2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each subcontract, at any tier, the price of which is expected to exceed \$500,000, and (ii) the negotiation of the price of each change or modification to a subcontract, at any tier, under this contract for which the price adjustment is expected to exceed \$500,000.
- (3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Contractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Contractor states in writing the basis for apply this exception.
- (4) In submitting the cost or pricing data, the subcontractor, at any tier, shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by subcontractors, at any tier, to the next higher-tier subcontractor or the Contractor, as applicable, for retention.
- (b) The certificates required by this clause shall be in the form set forth below:

CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is

impracticable (see FAR 15.804-6(d)), to the contractor in support of _____* are accurate, complete, and current as of _____**.

Firm:
Name:
Title:
Date of Execution:***

*Identify the proposal, quotation, request for price adjustment, or other submission involved.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

- (c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this contract change or other modification involving an amount in excess of \$500,000 were accurate, complete, and current, Sandia and/or DOE shall, until the expiration of 3 years from the date of final payment under this contract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.
- (d) If the original price of this contract exceeds \$100,000 or the price of any change or other modification to this contract is expected to exceed \$100,000, the Contractor agrees to furnish Sandia certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- (e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the contract, nor does it apply to a subcontract change or modification, at any tier, where the contract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the contract.
- (f) The Contractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each subcontract, at any tier, hereunder in excess of \$500,000 and in each subcontract, at any tier, of \$500,000 or less, at the time of making a change or other modification thereto in excess of \$500,000.
- (g) If Sandia determines that any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor, at any tier, pursuant to this clause or any subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Contractor's certificate of current cost or pricing data, then

such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that subcontractors, at any tier, subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier subcontractors.)

CLAUSE F11 - TERMINATION OF DEFINED BENEFIT PENSION PLANS

In the event this contract or any amendment, thereto, required Current Cost or Pricing Data to be submitted, the Contractor shall promptly notify the Sandia Contracting Representative (SCR) in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to Sandia or the Government for its equitable share. The Contractor shall include the substance of this clause in all subcontracts under this contract, which are subject to Current Cost or Pricing Data.

CLAUSE F20 - AUDIT

(a) Examination of Costs

If this is a cost-reimbursement, incentive, time-and-materials, labor-hours, or price redeterminable contract, or any combination of these, the Contractor shall maintain - and the SCR or representatives of the SCR shall have the right to examine and audit - books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) Cost or Pricing Data

If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the SCR or representatives of the SCR who are employees of Sandia or the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) Reports

If the Contractor is required to furnish cost, funding, or performance reports, the SCR or representatives of the SCR who are employees of Sandia or the Government shall have the right to examine and audit books, records, other documents,

and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) Availability

The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in FAR Subpart 4.7, Contractor Records Retention, or for any longer period required by statute or by other clauses of this contract. In addition:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause, if any, or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties.

"R" CLAUSES APPLY TO THIS REQUEST FOR QUOTATION (RFQ) AT ALL VALUES

CLAUSE R10 - TAXES

By signing this RFQ, quoter certifies that all State or Local Sales and Use Taxes, or taxes upon or measured by receipts from sales, have been separately stated and that the price does not include any contingencies for such taxes. (Note: See Clause A31 entitled "Taxes" herein.)

CLAUSE R12 - NEW SUPPLIES

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

CLAUSE R13 - GOVERNMENT MATERIAL/EQUIPMENT

Quoter must list the Government material/equipment quoter will use in the performance of the Statement of Work in this RFQ and provide details concerning its use.

CLAUSE R20 - CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

(a) By signing the response to this RFQ, the quoter certifies that:

(1) The prices in this quotation have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other quoter or competitor relating to (i) those prices, (ii) the intention to submit a quotation,

or (iii) the methods or factors used to calculate the prices quoted;

(2) The prices in this quotation have not been and will not be knowingly disclosed by the quoter, directly or indirectly, to any other quoter or competitor before quotation opening or contract award unless otherwise required by law; and

(3) No attempt has been made or will be made by the quoter to induce any other concern to submit or not to submit a quotation for the purpose of restricting competition.

(b) Each signature on the quotation is considered to be a certification by the signatory that the signatory:

(1) Is the person in the quoter's organization responsible for determining the prices being quoted in this quotation or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the quoter's principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

[In the RFQ response or letter attached thereto, list the full name of person(s) in the quoter's organization responsible for determining the prices offered in this quotation or proposal, and the title of his or her position in the quoter's organization.]

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the quoter deletes or modifies subparagraph (a)(2) above, the quoter must furnish with its quotation a signed statement setting forth in detail the circumstances of the disclosure.

CLAUSE R21 - CONTINGENT FEE REPRESENTATION AND AGREEMENT

(a) REPRESENTATION. The quoter certifies by signing this RFQ that, except for full-time bona fide employees working solely for the quoter or except as fully disclosed in an attachment to this RFQ, the quoter has not employed or retained any person or company to solicit or obtain this contract, and has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) The quoter agrees to provide information relating to the above representation as requested by the SCR when, pursuant to subparagraph (a) above, quoter describes exceptions taken to the certification.

CLAUSE R22 - ACKNOWLEDGMENT OF AMENDMENTS TO THIS RFQ

Quoters shall acknowledge receipt of any amendment to this RFQ (a) by signing and returning the amendment, (b) by listing the amendment number and date in the quotation, or (c) by letter or telegram. The SCR must receive the acknowledgment by the time and at the place specified for receipt of quotations.

CLAUSE R23 - FALSE STATEMENTS IN QUOTATIONS

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

CLAUSE R25 - SUBMISSION OF QUOTATIONS

(a) Quotations and quotation modifications shall be submitted in sealed envelopes or packages (1) addressed to the office specified in this RFQ and (2) showing the time specified for receipt, the RFQ number, and the name and address of the quoter.

(b) Telegraphic quotations will not be considered unless authorized by this RFQ; however, quotations may be modified or withdrawn by written or telegraphic notice, if such notice is received by the time specified for receipt of quotations.

CLAUSE R26 - EXPLANATION TO PROSPECTIVE QUOTERS

Any prospective quoter desiring an explanation or interpretation of this RFQ, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective quoters before the submission of their quotations. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective quoter concerning a RFQ will be furnished promptly to all other prospective quoters as an amendment to the RFQ, if that information is necessary in submitting quotations or if the lack of it would be prejudicial to other prospective quoters.

CLAUSE R27 - LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF QUOTATIONS

(a) Quotation must be received at the office designated in this RFQ at the time specified for receipt.

(b) Any modification or withdrawal of a quotation is subject to the same conditions as in paragraph (a) above.

(c) The only acceptable evidence to establish the time of receipt by Sandia is the time/date stamp of the Sandia Quotation Registrar on the quotation wrapper.

(d) Notwithstanding paragraph (a) above, a late quotation or a late modification of an otherwise successful quotation that makes its terms more favorable to Sandia or the Government will be considered at any time it is received and may be accepted.

(e) A quotation may be withdrawn in person by a quoter or its authorized representative if, before the exact time set of receipt of quotations, the identity of the person requesting withdrawal is established and that person signs a receipt for the quotation.

CLAUSE R32 - PREPARATION OF QUOTATIONS - CONSTRUCTION

participation in each trade
in each trade

- (a) Quotations must be (1) submitted on the forms furnished by Sandia or on copies of those forms, and (2) manually signed. The person signing a quotation must initial each erasure or change appearing on any quotation form.
- (b) The quotation form may require quoters to submit quotation prices for one or more items on various bases, including:
 - (1) Lump sum quoting;
 - (2) Alternate prices;
 - (3) Units of construction; or
 - (4) Any combination of subparagraphs (1) through (3) above.
- (c) If the RFQ requires quoting on all items, failure to do so will disqualify the quotation. If quoting on all items is not required, quoters should insert the words "no quotation" in the space provided for any item on which no price is submitted.
- (d) Alternate quotations will not be considered unless this RFQ authorizes their submission.

Bernalillo Co., NM	38.3	6.9
Alameda Co., CA	25.6	6.9
NTS/TTR, NV	12.6	6.9

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

- (c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

CLAUSE R40 - CONTRACT AWARD

- (a) Sandia may evaluate quotations in response to this RFQ without discussions and award a contract to the responsible quoter whose quotation, conforming to the RFQ, will be most advantageous to Sandia and the Government, considering only price and other evaluation criteria, if any, specified elsewhere in this RFQ.
- (b) Sandia may reject any or all quotations, and waive informalities or minor irregularities in quotations received.
- (c) Sandia may award a contract for any item or combination of items, unless doing so is precluded by a restrictive limitation in this RFQ or the quotation.

- (d) The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this RFQ. The notification shall list the:

CLAUSE R50 - NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

- (a) The quoter's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause in this RFQ.
- (b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<u>Covered Area</u>	<u>Goals for minority</u>	<u>Goals for female participation</u>
---------------------	---------------------------	---------------------------------------

- (1) Name, address, and telephone number of the subcontractor;
- (i) Employer identification number of the subcontractor;
- (2) Estimated dollar amount of the subcontract;
- (3) Estimated starting and completion dates of the subcontract; and
- (4) Geographical area in which the subcontract is to be performed.

SECTION III
SUPPLEMENTAL TERMS AND CONDITIONS
CONSTRUCTION

The Clauses specified herein apply to this contract only when specifically called out in Section I.

INDEX OF CLAUSES		
<u>No.</u>	<u>Title</u>	<u>Page</u>
*206-CX	Cost Accounting Standards Notices and Certification	35
*207-CB	Cost Accounting Standards Clauses - Full Coverage	36
*208-CZ	Cost Accounting Standards Clauses - Modified Coverage	38
*262-DS	Disputes	40
*263-QB	Quotation Guarantee Bond	40
*264-CE	Contractor-Owned Equipment	40
*265-CC	Contract Changes	41
*408-LS	Labor Standards Provision	41
*412-SC	Service Contract Act of 1965, as Amended	45
*421-SD	Small Business and Small Disadvantaged Business Subcontracting Plan	48
*422-LM	Labor Surplus Area Subcontracting Program	50
*423-SB	Notice of Total Small Business Set-Aside	50
*424-DB	Notice of Small Disadvantaged Business Set-Aside	50
*600-KCL	Classified Matter	51
*605-PX	Access to Sandia Computers	52
*610-FO	Foreign Ownership, Control or Influence Over Contractor	53
*824-DR	Organizational Conflicts of Interest - Disclosure or Representation	53
*826-OS	Organizational Conflicts of Interest - Special	54

*Flow Down Provision Included - Inclusion of these clauses, suitably modified to identify parties, is required in subcontracts at any tier.

CLAUSE 206-CX (12-93) COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION

Note: This clause does not apply to small businesses or foreign governments.

A. COST ACCOUNTING STANDARDS NOTICES

Offerors/Quoters shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. DISCLOSURE STATEMENT--COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 48 CFR, Parts 9903 and 9904, except for those contracts which are exempt as specified in 48 CFR, Subpart 9903.201-1.

(b) Any offeror/quoter submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure Statement must be submitted as a part of the offeror's/quoter's proposal under this solicitation unless the offeror/quoter has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror/quoter may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this clause.

CAUTION: A practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

[] (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer/quotation, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASE DS-1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed:

The offeror/quoter further certifies that practices used in estimating costs in pricing this proposal/quotation are consistent with the cost accounting practices disclosed in the Disclosure Statement.

[] (2) Certificate of Previously Submitted Disclosure Statement.

The offeror/quoter hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed:

The offeror/quoter further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

[] (3) Certificate of Monetary Exemption.

The offeror/quoter hereby certifies that the offeror/quoter, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than \$25 million in the cost accounting period immediately preceding the period in which this proposal/quotation was submitted. The offeror/quoter further certifies that if such status changes before an award resulting from this proposal/quotation, the offeror/quoter will advise the SCR immediately.

[] (4) Certificate of Interim Exemption.

The offeror/quoter hereby certifies that (i) the offeror/quoter first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer/quotation was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror/quoter is not yet required to submit a Disclosure Statement. The offeror/quoter further certifies that if an award resulting from this proposal/quotation has not been made within 90 days after the end of that period, the offeror/quoter will immediately submit a revised certificate to the SCR, in the form specified under subparagraphs (c)(1) or (c)(2) of Part I of this clause, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors/quoters currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of \$25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals/quotations submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS -- EXEMPTION FOR CONTRACTS OF \$500,000 OR LESS

If this proposal is expected to result in the award of a contract of \$500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

[] The offeror hereby claims an exemption from CAS requirements under the provisions of 48 CFR Subpart 9903.201-1(b)(2).

III. COST ACCOUNTING STANDARDS--ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror/quoter is eligible to use the modified provisions of Federal Acquisition Regulation (FAR) 30.201-

2(b) and elects to do so, the offeror/quoter shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

[] The offeror/quoter hereby claims an exemption from the Cost Accounting Standards clause under the provisions of FAR 30.201-2(b) and certifies that the offeror/quoter is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal/quotation was submitted, the offeror/quoter received less than \$25 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror/quoter further certifies that if such status changes before an award resulting from this proposal/quotation, the offeror/quoter will advise the SCR immediately.

CAUTION: An offeror/quoter may not claim the above eligibility for modified contract coverage if this proposal/quotation is expected to result in the award of a national defense contract of \$25 million or more or if, during its current cost accounting period, the offeror/quoter has been awarded a single CAS-covered national defense prime contract or subcontract of \$25 million or more.

IV. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror/quoter shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

[] YES [] NO

CLAUSE 207-CB (12-93) COST ACCOUNTING STANDARDS CLAUSES - FULL COVERAGE

I. COST ACCOUNTING STANDARDS

(a) Unless the contract is exempt under 48 CFR, Subparts 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) (CSA-covered Contract Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by CFR 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 SCR 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 Sandia or 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 (Appendix B, FAR loose-leaf edition), 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, 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 SCR 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 of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

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

(c) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract'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. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on--

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

Note (1): New or modified CAS shall be applicable to both national defense and nondefense CAS-covered contracts upon award of a new national defense CAS-covered contract containing the new or modified Standard. The award of a new nondefense CAS-covered contract shall not trigger application of new CAS or modification to CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

Note (3): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in subparagraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations and Standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor.

However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with Sandia. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit which, pursuant to FAR 30.201-2(b), is entitled to elect modified contract coverage and to follow 30.401 and 30.402, the clause in Sandia Form SF6432-STD entitled "Disclosure and Consistency of Cost Accounting Practices" shall be inserted in lieu of this clause.

Note (5): The terms defined in FAR 30.301, and 31.001 shall have the same meanings herein. As there defined "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

II. ADMINISTRATION OF COST ACCOUNTING STANDARDS

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 cognizant SCR a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays 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 display the potential impact of 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 CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, 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 (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause in Sandia Form SF6432-STD, 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) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.

(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 SCR of the determination of noncompliance.

(b) Submit a cost impact proposal in the form and manner specified by the SCR 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 to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, shall identify each additional standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the CAS Cost Accounting Standards or with subparagraph (a)(3) of the CAS clause, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clause, Cost Accounting Standards, and 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 this CAS article, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the compliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this article are not submitted within the specified time, or any extension granted by the SCR, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contract, 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 SCR.

(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 or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause--

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

(2) include the substance of this clause in all negotiated subcontracts. In addition, 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.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

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

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

CLAUSE 208-CZ (12-93) COST ACCOUNTING STANDARDS CLAUSES MODIFIED COVERAGE

I. DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR Subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract as indicated in 48 CFR, Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, Subparts 9903.202-1 through 9903.202-5. If the Contractor has notified the SCR 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 Sandia or the Government.

- (3) (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either Sandia or the Contractor, and the Contractor agrees to negotiate with the SCR the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.
- (ii) Price set by law or regulation; or
- (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

II. ADMINISTRATION OF COST ACCOUNTING STANDARDS

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 cognizant SCR a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays 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 display the potential impact of 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 CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, 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 (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause, 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) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.
- (4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, 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 rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, from the time the payment by the United States was made to the time the adjustment is effected.
- (b) The Contractor shall permit any authorized representatives of Sandia or the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- (c) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, and shall require such inclusion in all other subcontracts of any tier, except that--
 - (1) If the subcontract is awarded to a business unit which pursuant to FAR 30.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in Sandia Form SF6432-STD shall be inserted in lieu of this clause; or
 - (2) This requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price negotiated is not based on--
 - (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (ii) Submit a cost impact proposal in the form and manner specified by the cognizant SCR 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. If the cost impact proposal is not submitted within the specified time, or any extension granted by the cognizant SCR, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant SCR.
 - (c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3) or

(a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause--

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

(2) include the substance of this clause in all negotiated subcontracts. In addition, 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.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the SCR in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

CLAUSE 262-DS Disputes

(a) Any dispute relating to or resulting from a breach of this Contract, including but not limited to claims for additional compensation, which is not disposed of by agreement shall be submitted in writing to the SCR. The SCR shall either furnish a decision in writing or invoke nonbinding mediation as a precondition to any further remedy. The independent mediator who has no conflict of interest with either party will be chosen by Sandia, and the cost of mediation will be shared equally by the Contractor and Sandia. If instead of invoking mediation, the SCR issues a decision adverse to the Contractor, that decision will become final and conclusive. As a precondition to any further remedy, including judicial review, the Contractor must provide the SCR another opportunity to invoke nonbinding mediation. Again, the independent mediator will be chosen by

Sandia, and the cost of mediation will be shared equally by the Contractor and Sandia.

(b) In the event that mediation does not result in the Contractor and Sandia settling their disputes, the Contractor and Sandia agree that the dispute will be decided in the Federal District Court of New Mexico, provided that there is jurisdiction, and if there is no jurisdiction, then in a court of competent jurisdiction in the State of New Mexico. Pending full decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the SCR's decision.

(c) Irrespective of the place of performance, this Contract will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. To the extent that the federal common law of government contracts is not dispositive or other articles are in dispute, the laws of the State of New Mexico shall apply, if law exists in the State of New Mexico; if not, then the law of the location of the project shall apply.

CLAUSE 263-QB - QUOTATION GUARANTEE BOND

(a) Failure to furnish a quotation guarantee in the proper form and amount, by the time set for openings of quotations, may be cause for rejection of the quotation.

(b) Notwithstanding any reference on Sandia Form SF 6432-QB, the quoter (offeror) shall furnish a quotation guarantee in the form of a firm commitment from a corporate surety only. Individual sureties are not acceptable. The corporation(s) executing the bond as surety(s) must appear on the U.S. Department of the Treasury's List of Approved Sureties and must act within the limitation listed therein.

(c) If the successful quoter fails to execute all contractual documents or provide a bond(s) as required by the solicitation within the time specified, the SCR may invoke payment of excess costs under the quotation guarantee bond and/or terminate the contract for default.

(d) Unless otherwise specified in the quotation, the quote will (1) remain valid for a minimum of 60 days; and (2) the quoter will provide a bond(s) within 10 working days after the effective date of the contract.

(e) Should the quoter not properly execute the required contractual documents and bond(s) within the time specified in the solicitation, the quoter will be held liable.

CLAUSE 264-CE - CONTRACTOR - OWNED EQUIPMENT

(a) For any construction equipment or special equipment, including fuel and lubricants, required for the economical performance of extra work, the Contractor will be allowed a rental price, to be agreed upon in writing before such work is begun, for every hour that such construction equipment or special equipment is actually operated on the work. Such hourly rental price shall not exceed 1/176 part of the monthly rate stated for such equipment in the latest edition of the "Compilation of Rental Rates for Construction Equipment" by Associated Equipment Distributors, and the rental price allowed will be understood to

include all fuel, supplies, repairs, and maintenance of equipment.

- (b) The Contractor's representative and the SDR shall compare records for changes in work to the end of each day. Such records shall be made in duplicate upon a form provided for such purpose by the SDR, and shall be signed by both the SDR and the Contractor's representative - one copy being submitted to the SDR and the other being retained by the Contractor.

CLAUSE 265-CC - CONTRACT CHANGES

- (a) When requested by the SCR, the Contractor shall submit proposals for changes in work to the Construction Management Engineer. Proposals are to be submitted, as soon as possible, and at least within 30 calendar days after receipt of request. Proposals shall be in legible for, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The Contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. No itemized breakdown will be required for proposals amounting to less than \$1,000.

- (b) When the necessity to proceed with a change does not allow sufficient time to check a proposal or because of failure to reach an agreement, the SCR may order the Contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, if a proceed order is issued, the Contractor shall submit a proposal for changes in work within 30 calendar days.

- (c) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7-1/2 percent overhead and 7-1/2 percent profit on the next \$30,000; 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

- (d) The prime Contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime Contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first \$20,000; 7-1/2 percent fee on the next \$30,000; and 5 percent fee on balance over \$50,000.

- (e) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

- (f) Where the Contractor or subcontractor's portion of a change involved credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. The Contractor's fee is limited to the net increase to Contractor or subcontractor's portions cost computed in accordance herewith.

- (g) Where a change involved credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the Contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

- (h) Cost of Federal Old Age Benefit (Social Security) tax and of workmen's compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime Contractor's fee will be allowed on such items in subcontractor's proposals.

- (i) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, watchmen, use of small tools, incident job burdens, and general home office expenses and no separate allowance will be made therefor.

CLAUSE 408-LS (04-91) LABOR STANDARDS PROVISION

I. DAVIS-BACON ACT (40 U.S.C. 276-276A-7)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (b) (1) The SCR shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed

under the contract shall be classified in conformance with the wage determination. The SCR shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (ii) The classification is utilized in the area by the construction industry.
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the SCR agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the SCR, through DOE, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the SCR or will notify the SCR within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the SCR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the SCR shall refer the questions, including the views of all interested parties and the recommendation of the SCR, through DOE, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the SCR or will notify the SCR within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraph (b)(2) and (b)(3) of this clause shall be paid for all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

II. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -OVERTIME COMPENSATION

(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 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 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 mechanics 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 SCR 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 Sandia Contract with the same 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 mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, 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 representative of the SCR 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 the provisions set forth in paragraphs (a) through (e) of this clause.

III. WITHHOLDING OF FUNDS

The SCR 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 the Contractor under this contract or any other Sandia contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SCR may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

IV. PAYROLLS AND BASIC RECORDS

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls, including the payrolls of all subcontractors, to the SCR. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Form WH-347 that is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 may be used to meet this requirement.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the SCR or authorized representatives of the SCR or the Department of Labor. The Contractor or subcontractor shall permit the SCR or representatives of the SCR or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the SCR may, after written notice to the Contractor,

take such action as may be necessary to cause the suspension of any further payments. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

V. APPRENTICES AND TRAINEES

(a) Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the

U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal Employment Opportunity

The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, and 29 CFR Part 30.

VI. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

VII. SUBCONTRACTS (LABOR STANDARDS)

(a) The Contractor or subcontractor shall insert in any subcontracts the provisions entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination - Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations and Certification of Eligibility, and such other clauses as the SCR may, by appropriate instruction, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the SCR a completed statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated

acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the SCR an updated completed SF 1413 for such additional subcontract.

VIII. CONTRACT TERMINATION - DEBARMENT

A breach of the contract provisions entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

IX. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

X. DISPUTES CONCERNING LABOR STANDARDS

The U. S. Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and Sandia, the U. S. Department of Labor, or the employees or their representatives.

XI. CERTIFICATION OF ELIGIBILITY

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted by any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

CLAUSE 412-SC (03-91) SERVICE CONTRACT ACT OF 1965, AS AMENDED

Definitions for the purposes of this act--

- (a) "Secretary" means Secretary of Labor.
- (b) "Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- (c) The term "compensation" means any of the payments or fringe benefits described in section 2 of the Act.

- (d) "United States," as used, includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) i.e., American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any U.S. base or possession within a foreign country.

This contract, to the extent that it is of the character to which the Service Contract Act of 1965, as amended (41 U.S.C. 351-357) applies, is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder.

I. COMPENSATION

Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any attachment to this contract. As specified in the attached Wage Determination, any class of service employees which is not listed therein, but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties who shall be deemed to be Sandia/DOE, the Contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, DOE shall submit the question, together with its recommendation, to the office of Special Wage Standards, Employment Standards Administration (ESA), Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or an authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

II. ADJUSTMENT

If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965, as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Employment Standards Administration, Department of Labor as provided in the Act.

III. OBLIGATION TO FURNISH FRINGE BENEFITS

The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in 29 CFR Part 4.

IV. MINIMUM WAGE

In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any of its employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

V. OBLIGATIONS ATTRIBUTABLE TO PREDECESSOR CONTRACTS

If this contract succeeds a contract, subject to the Service Contract Act of 1965, as amended, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this contract neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement.

No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the Secretary of Labor or an authorized representative determines that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations or finds, after a hearing as provided in Department of Labor regulations, 29 CFR 4.10, that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a similar character in the locality.

VI. NOTIFICATION TO EMPLOYEES

The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

VII. SAFE AND SANITARY WORKING CONDITIONS

The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

VIII. RECORDS

The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in subparagraphs (a) through (e) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Employment Standards Administration (ESA), Department of Labor.

- (a) Employee's name and address.

- (b) Employee's work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.
- (c) Employee's daily and weekly hours so worked.
- (d) Any deductions, rebates, or refunds from employee's total daily or weekly compensation.
- (e) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator (as defined in 41 CFR 1-12.902-2(c) or an authorized representative pursuant to Paragraph (I) of this Clause. A copy of the report required in paragraph XII(a) of this Clause shall be deemed to be such a list.

IX. WITHHOLDING OF PAYMENT AND TERMINATION OF CONTRACT

Sandia/DOE shall withhold or cause to be withheld from the Contractor under this or any other Government contract with the prime Contractor such sums as DOE, or an appropriate officer of the Department of Labor, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this Clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, Sandia may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

X. SUBCONTRACTORS

The Contractor agrees to insert this Clause relating to the Service Contract Act of 1965 in all subcontracts. The term "Contractor" as used in this Clause in any subcontract shall be deemed to refer to the subcontractor.

XI. COMPARABLE RATES

The classes of service employees expected to be employed under the contract with Sandia would be subject, if employed by the Government, to the provisions of 5 U.S.C. 5341 or 5332 and would, if so employed, be paid not less than the rates of wages and fringe benefits listed in the Wage Rate Schedules established by the Government, when available.

XII. CONTRACTOR'S REPORT

- (a) If there is a wage determination attachment to this contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the Contractor shall report to the Sandia Contracting Representative the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined, as provided in paragraph I of this Clause.
- (b) If wages to be paid or fringe benefits to be furnished any service employees employed by the Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Contractor shall report such fact to the Sandia Contracting Representative, together with full information as to the application and accrual

of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

XIII. REGULATIONS INCORPORATED BY REFERENCE

All interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4, Subpart C, are hereby incorporated by reference in this contract.

XIV. EXEMPTIONS

This Clause relating to the Service Contract Act of 1965 shall not apply to the following:

- (a) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;
- (b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45);
- (c) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;
- (d) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;
- (e) Any contract for public utility services including electric light and power, water, steam, or gas;
- (f) Any employment contract providing for direct services to a Federal agency by an individual or individuals;
- (g) Any contract with the Post Office Department (U.S. Postal Service), the principal purpose of which is the operation of postal contract stations;
- (h) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8 (d) of the Service Contract Act of 1965 to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands, as defined in the Outer Continental Shelf Lands Act, (43 U.S.C. 1331, et. seq.) i.e. American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any base or possession within a foreign country;
- (i) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4 (b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(2) Any contract entered into by the U.S. Postal Service with an individual owner operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

XV. SPECIAL EMPLOYEES

Notwithstanding any of the provisions in paragraphs I through XII of this Clause relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

- (a) (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, (29 U.S.C. 201 et seq.) in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525);
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.
- (b) An employee engaged in an occupation in which employee customarily and regularly receives more

than \$30 a month in tips may have the amount of tips credited by employee's employer against the minimum wage required by section 2(a)(1) or section 2 (b) (1) of the Act, in accordance with the regulations in 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed \$1.34 per hour.

CLAUSE 421-SD (12-93) SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN

- (a) This clause does not apply to small business concerns.
- (b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the SCR, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by Sandia or a subcontractor calling for supplies or services required for performance of the contract or subcontract.
- (c) The offeror/quoter, upon request by the SCR, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror/quoter is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged 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 SCR. Failure to submit and negotiate the subcontracting plan shall make the offeror/quoter ineligible for award of a contract.
- (d) The offeror's/quoter'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 concerns and small disadvantaged business concerns as subcontractors. The offeror/quoter 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;
 - (ii) Total dollars planned to be subcontracted to small business concerns; and
 - (iii) Total dollars planned to be subcontracted to small disadvantaged 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 and (ii) small disadvantaged business concerns.

- (4) A description of the method used to develop the subcontracting goals in (1) above.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, Sandia Small and Small Disadvantaged Business Liaison, or small and small disadvantaged business concerns trade associations).
- (6) A statement as to whether or not the offeror/quoter 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 and (ii) small disadvantaged business concerns.
- (7) The name of the individual employed by the offeror/quoter who will administer the offeror's/quoter's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror/quoter will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror/quoter will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror/quoter will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror/quoter.
- (10) Assurances that the offeror/quoter will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow Sandia to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit, not later than the 25th day of the succeeding month, Standard Form (SF 294) only, on a quarterly basis current as of the last day of March, June, September and December, and upon contract completion, in accordance with the instructions on the form except the report shall be submitted quarterly rather than semi-annually and additionally shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of their contract, and (iv) ensure that its subcontractors agree to submit SF 294 in

- accordance with the instructions at (iii) above.
- (11) A recitation of the types of records the offeror/quoter will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged 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, guides, and other data that identify small and small disadvantaged business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged 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 small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.
 - (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged 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/quoter to Sandia, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual 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 and small disadvantaged 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 and small disadvantaged 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 and small disadvantaged business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.
 - (4) Provide notice to subcontractors concerning penalties, listed below, for misrepresentations of business status as small business or small disadvantaged 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.
- Penalties:
- 1. be punished by imposition of a fine, imprisonment or both
 - 2. be subject to administrative remedies, including suspension and debarment; and
 - 3. be ineligible for participation in programs conducted under the authority of the Small Business Act
- (f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror/quoter by this clause; provided, (1) the master plan has been approved, (2) the offeror/quoter provides copies of the approved master plan and evidence of its approval to the SCR, and (3) goals and any deviations from the master plan deemed necessary by the SCR to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's/quoter's production generally, for both commercial and noncommercial products, rather than solely to Sandia's contract. In these cases, the offeror/quoter shall, with the concurrence of the SCR, submit one company-wide or division-wide annual plan.
- (2) The annual plan shall be reviewed for approval by the agency awarding the offeror/quoter its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the SCR.
- (3) The approved plan shall remain in effect during the offeror's/quoter's fiscal year for all of the offeror's/quoter's commercial products.
- (h) Prior compliance of the offeror/quoter with other subcontracting plans under previous contracts will be considered by the SCR in determining the responsibility of the offeror/quoter 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 Small Business Concerns and Small Disadvantaged Business

Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

facilitate the participation of LSA concerns;

CLAUSE 422-LM (2-91) LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

I. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(a) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(b) Order of Preference. In complying with paragraph (a) above and with paragraph (b) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(c) Definitions

(1) "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

(2) "Labor surplus area concern," as used in this clause means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

II. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(a) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall--

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities, and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by Sandia or the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(b) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (b), and to notify the SCR of the names of subcontractors.

CLAUSE 423-SB NOTICE OF SMALL BUSINESS SET-ASIDE (FAR 52.219-6)

(a) Definition

"Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General

(1) Offers are solicited only from business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement

A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts or in situations where the SBA has established a waiver of the non manufacturer's rule.

CLAUSE 424-DB NOTICE OF SMALL DISADVANTAGED BUSINESS SET-ASIDE (FAR 52.219-6)

(a) Definition

"Small disadvantaged business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small disadvantaged business under the size standards in this solicitation.

(b) General

- (1) Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

(c) Agreement

A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts or in situations where the SBA has established a waiver of the non manufacturer's rule.

CLAUSE 600-KCL (03-91) CLASSIFIED MATTER

I. SECURITY

- (a) Contractor's Duty to Safeguard all Classified Matter. The Contractor shall, as directed by and in accordance with DOE's security regulations and requirements, be responsible for safeguarding all classified matter (documents, drawings, information, material, etc.) and protecting against sabotage, espionage, loss and theft, the classified document 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 Sandia (see Section "III") any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract and submit to Sandia a properly completed Certificate of Nonpossession/Retention of Classified Matter, SF 2902-T. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the Sandia Contracting Representative (SCR), the Contractor will complete a Certificate of Nonpossession/Retention of Classified Matter, SF 2902-T, to be furnished to Sandia specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and the period of retention, if known. If retention is approved by the SCR, the security provisions of the contract will continue to be applicable to the matter retained.
- (b) Regulations. The Contractor agrees to conform to all security regulations and requirements as directed by DOE.
- (c) Definitions
- (1) Classified Levels. The terms top secret, secret and confidential, as used in this clause, refer to the classification levels defined in Executive Order 12356.

(2) Classified Information. The term "classified information," as used in this Clause, means Restricted Data, Formerly Restricted Data, and National Security Information.

(3) Restricted Data. The term "Restricted Data," as used in this Clause, means all data concerning (a) design, manufacture, or utilization of atomic weapons; (b) the production of special nuclear material; or (c) 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.

(4) Formerly Restricted Data. The term "Formerly Restricted Data," as used in this Clause, means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.

(5) National Security Information. The term "National Security Information," as used in this Clause, means information or material which is owned by, produced for or by, or under the control of the United States Government, which has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(6) Authorized Original Classifier or Derivative Classifier. The terms Authorized Original Classifier and Derivative Classifier, as used in this clause, refer to the classification authorities defined in Executive Order 12356.

(d) Security Clearance of Personnel. The Contractor shall not permit any individual to have access to any classified matter, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements applicable to the particular level and category of classified matter to which access is required.

(e) Criminal Liability. It is understood that disclosure of any classified matter relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified matter 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 Executive Order 12356.)

(f) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the SCR, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(g) Transfer of Classified Matter. No classified matter may be transferred to another location of the Contractor or subcontractor without the written consent of the SCR.

II. CLASSIFICATION

In the performance of the work under this contract the Contractor shall ensure that an Authorized Classifier shall assign classifications to all documents, material and equipment originated or generated under the contract, if any, in accordance with classification regulations and guidance furnished to the Contractor by Sandia. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall ensure that an Authorized Classifier shall assign classifications to all such documents, material and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the Contractor.

III. SHIPMENTS

In no event shall the Contractor make a classified shipment to a location other than the approved classified mail/document address specified here. Contractor shall follow mailing and shipping procedures for classified matter consistent with the requirements of their facilities as directed by DOE.

The Contractor is authorized to use the following address when sending classified items to Sandia in performance of the statement of work specified for this contract.

Address: (To be completed at time of award)

When using this address as part of a classified mailing, all classified matter should be in an inner envelope marked:

"For (To be completed at time of award)"

All classified shipments (material/hardware) shall be in accordance with Security regulations as directed by DOE. Sandia packaging specification SPS 230 applies in all cases involving Secret Restricted Data (SRD) shipments.

If SRD is involved, the Contractor shall notify the SCR of the number of strapping seals required in sufficient time prior to packaging for shipment.

IV. FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject material of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the SCR. DOE 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 SCR 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 SCR 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 Sandia Contracting Representative a copy of the application for DOE determination whether, for reasons of national security, the application shall 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 SCR.

(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 SCR 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 (DOE) 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 matter.

V. MODIFICATION TO SECTION II

"A" Clause entitled, "Unclassified Contract" is hereby deleted in its entirety.

VI. CLASSIFICATION LISTING

This contract is unclassified, but requires the Contractor to have access to or generate classified matter as listed below.

Origination of or use of classified information or material of higher classification level or category than listed is prohibited. Origination or use of RESTRICTED DATA is permitted only as specifically authorized below.

No classified portion of the work under this contract may be subcontracted nor may any classified information be furnished to any proposed or actual subcontractor except as approved in writing by the SCR.

ITEM IDENTIFICATION CLASSIFICATION

VII. USE OF CONTRACTOR/SUBCONTRACTOR FACILITIES

Unless specific facilities are listed below, the only location(s) wherein the Contractor or its subcontractors are authorized to perform work requiring access to classified information or material, or to have classified information or material in their possession, is on site at Sandia-controlled premises in secured areas.

FACILITY NAME AND ADDRESS: (to be completed by Sandia at time of award)

CLAUSE 605-PX (04-91) ACCESS TO SANDIA COMPUTERS

(a) Contractor personnel who are granted access to Sandia computers and word processors are subject to the computer security procedures outlined in this Clause. The procedures are applicable to Contractor personnel located at a Sandia facility or at the Contractor's facility. If the Contractor does not comply with the provisions of this Clause, Sandia may withdraw Contractor's

access to Sandia computers and may also terminate this contract for default. Misuse of a Sandia computer may be a violation of law and could result in appropriate action including prosecution.

- (b) Access to Sandia computing facilities by Contractor personnel may be permitted as required to perform the contract Statement of Work. Sandia computers may be used only to perform work authorized in the contract.
- (c) Computer software or documentation developed on or for Sandia computer systems is the property of Sandia and the Government unless provided otherwise in the contract.
- (d) Information or data furnished by Sandia or obtained from a Sandia computer by Contractor personnel must be protected by the Contractor to prevent disclosure to any person other than Contractor's employees having a need to know unless such disclosure is authorized in writing by the Sandia Contracting Representative.
- (e) Classified material or information shall be protected in accordance with the security provisions of the contract, if applicable. If this contract does not include security provisions and the Contractor is furnished or comes in contact with classified material or information, it shall be reported immediately to the SCR.
- (f) Files of any other user may not be accessed without specific permission from that user.
- (g) Sandia reserves the right to monitor computer use by reviewing the contents of all files on Sandia computers.
- (h) Computer passwords are issued to individuals and must not be shared. Computer passwords must be protected by each Contractor employee to prevent disclosure to any other persons. If a computer password is disclosed or potentially disclosed, the Contractor must notify the SCR immediately so that a new password can be issued.

CLAUSE 610-FO (02-91) FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
 - (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U. S., or a State or other jurisdiction within the U. S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
 - (4) Any person who is not a U. S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, classified material, or special nuclear material as defined in 10 CFR Part 710, may result.

(c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "SCR" shall mean the Sandia Contracting Representative. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(d) The Contractor shall immediately provide the SCR written notice of any changes in the extent and nature of FOCI over the Contractor which would affect the answers to the questions presented in 48 CFR 952.204-73 (Sandia Form SF 6432-QS). 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 SCR.

(e) In those cases where a Contractor has changes involving FOCI, the Department of Energy (DOE) must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Contractor to avoid or mitigate foreign influences.

(f) If the SCR at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the SCR shall provide in writing to safeguard any classified information, classified material, or significant quantity of special nuclear material.

(g) The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information, classified material, or a significant quantity of special nuclear material. Additionally, the Contractor shall require such subcontractor to submit a completed certification required in 48 CFR 952.204-73 (Sandia Form SF 6432-QS) prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the SCR.

(h) Information submitted by the Contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE and Sandia to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on Sandia's or DOE's rights, including Sandia's right to terminate this contract.

(j) The SCR 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 SCR's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if in the SCR's judgment, the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The SCR 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.

CLAUSE 824-DR (07-92) ORGANIZATIONAL CONFLICTS OF INTEREST - DISCLOSURE OR REPRESENTATION

It is Department of Energy (DOE) policy to avoid situations which place a DOE or Sandia Contractor in a position where the Contractor's judgment may be biased because of any past, present, or currently planned interest, financial, contractual, organizational or otherwise, the Contractor may have which relates to the work to be performed pursuant to this Request for Quotation (RFQ) or where the Contractor's performance of such work may provide it with an unfair competitive advantage. (As used in this Clause, "Contractor" means the offeror or any of its affiliates, successors in interest or proposed consultants or subcontractors of any tier.)

DISCLOSURE OR REPRESENTATION

(a) The Contractor shall, in a sealed envelope, provide the Sandia Contracting Representative (SCR), a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the Contractor has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The Contractor may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(b) In the absence of any relevant interests referred to above, the Contractor shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Contractor's proposed consultants and subcontractors are responsible for submitting information and may submit it directly to the SCR in a sealed envelope.

(c) The sealed envelope submitted to the SCR shall be forwarded to DOE for review of the Contractor's statement and DOE through the SCR may require additional relevant information from the Contractor. All information submitted, and any other known relevant information, will be used to determine whether an award by Sandia to the Contractor may create an organizational conflict of interest. If such organizational conflict of interest is found to exist, DOE through Sandia may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the Contractor, or (3) determine that it is otherwise in the best interest of the Government to contract with the Contractor by including appropriate conditions mitigating such conflict in the contract awarded.

To the extent that the Contractor's statement contains matter so marked, it shall be treated by DOE as proprietary or trade secret under applicable law and shall not be disclosed except as permitted by such law.

(d) The failure or refusal to provide the disclosure or representation and any additional information as required may result in disqualification of the Contractor for award of this Sandia contract. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the Contractor for award of this Sandia contract, or if such nondisclosure or misrepresentation is discovered after award, the resulting Sandia contract may be terminated for default. The Contractor may also be disqualified from subsequent related DOE or Sandia contracts or

subcontracts, and be subject to such other remedial action by the Government as may be permitted or provided by law or in the resulting contract. The attention of the Contractor in complying with this provision is directed to 18 U.S.C. 1001.

(e) Depending on the nature of the contract activities, the Contractor may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work contained in an RFQ, unless the RFQ specifically prohibits such exclusion. Any such proposed exclusion by a Contractor will be considered by Sandia in the evaluation of proposals, and if Sandia considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(f) No award to the Contractor shall be made until the disclosure or representation required by this clause has been evaluated. Failure to provide the disclosure or representation may be deemed to be a minor informality and the Contractor may be permitted to correct the omission promptly.

A suggested format for the Contractor to furnish a list of past, present, and currently planned activities (including contracts) which relate to the work to be performed under this RFQ is a columnar format showing:

- (1) The company (or agency) for which the work is being, has been, or will be performed;
- (2) Nature of the work (a brief description);
- (3) Period of performance for the work;
- (4) Dollar value of the work; and
- (5) Sales and marketing activity.

Similar information should be provided by the Contractor's subcontractors and consultants relating to the work to be performed by them under this RFQ.

(g) All statements, disclosures and/or representations relative to a potential conflict of interest, provided by the Contractor pursuant to this Clause should be enclosed in a sealed envelope addressed to the attention of the responsible SCR. Clearly mark the following on the front of the envelope:

- (1) Current date;
- (2) Solicitation (RFQ) number;
- (3) Contractor's name and address;
- (4) Name of the SCR; and
- (5) A statement reading substantially as follows:

"Notice to SCR: This envelope contains confidential information of the type required by the Organizational Conflicts of Interest Disclosure or Representation Clause in the referenced RFQ. Do not open this envelope; all statements, disclosures, and/or representations should be forwarded to the Area Manager, DOE Kirtland Area Office, for evaluation."

(a) Purpose. The primary purpose of this Clause is to aid in ensuring that the Contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Sandia 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 in this Clause collectively referred to as the "Contractor") in the activities covered by this Clause as a Contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity.

(1) Technical Consulting and Management Support Services

(i) The Contractor shall be ineligible to participate in any capacity in DOE or Sandia contracts, subcontracts, or proposals therefore which stem directly from the Contractor's performance of work under this contract. Furthermore, unless so directed in writing by the Sandia Contracting Representative (SCR), the Contractor shall not perform any technical consulting or management support 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 technical consulting and management support services.

(ii) If the Contractor under this contract prepares a complete or essentially complete statement of work or specification to be used in competitive procurements, 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 SCR, 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 commercial items to Sandia or the Government.

(2) Access To and Use of Information

(i) If the Contractor, in the performance of this contract, obtains access to information, such as DOE or Sandia plans,

policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of DOE or Sandia 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 work directly or indirectly for DOE or Sandia 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 DOE or Sandia.

(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 (Pub. L. 93-579), 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 shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this contract for its private purpose provided that, as of the date of such use, all reporting requirements of this contract have been met.

(c) Disclosure after Award

(1) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing in a sealed envelope to the SCR which shall include a description of the action which the Contractor has taken or proposes to take to avoid or mitigate such conflicts.

Sandia may, however, terminate the contract for convenience if it deems such termination to be in the best interests of the Government or Sandia.

(2) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this

contract and did not disclose the conflict, Sandia may terminate the contract for default.

(4) Name of the SCR; and

(d) Subcontracts

- (1) The Contractor shall include this Clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "Contract", "Contractor", and "Sandia Contracting Representative" shall be appropriately modified to preserve Sandia's and the Government's rights.
- (2) If a subcontract is to be issued for evaluation services or activities, or technical consulting and management support services, as defined at 48 CFR 909.570, the Contractor shall obtain for Sandia in a sealed envelope a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The Contractor shall not enter into any subcontract nor engage any consultant unless the SCR shall have first notified the Contractor that it has been determined there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

For purposes of this Clause the term "Department" as used in the above-cited definition includes "Sandia".

- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, Sandia may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.
- (f) Waiver. Requests for waiver under this Clause shall be directed in writing, in a sealed envelope addressed to the SCR, 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, such a waiver may be granted in writing.
- (g) Modifications. Prior to a contract amendment, when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.
- (h) All statements, disclosures and/or representations relative to a potential conflict of interest, provided by the Contractor pursuant to this Clause should be enclosed in a sealed envelope addressed to the attention of the responsible SCR. Clearly mark the following on the front of the envelope:
 - (1) Current date;
 - (2) Contract Number;
 - (3) Contractor's name and address;

"Notice to SCR: This envelope contains confidential information of the type required by the Organizational Conflicts of Interest Clause in the referenced contract. Do not open this envelope; forward it to the Area Manager, DOE Kirtland Area Office, for evaluation."