

<b>AWARD/CONTRACT</b>	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING	PAGE 1	OF PAGES 217
	2. CONTRACT (Proc. Inst. Ident.) NO <b>DE-AM26-04NT41817</b>	3. EFFECTIVE DATE <b>November 15, 2004</b>	4. REQUISITION/PURCHASE REQUEST PROJECT NO <b>26-04NT41817.000</b>	

5. ISSUED BY	CODE	6. ADMINISTERED BY (if other than Item 5)	CODE
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U.S. Department of Energy  
National Energy Technology Laboratory  
P.O. Box 880  
3610 Collins Ferry Road  
Morgantown, WV 26507-0880

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State, and ZIP Code)  <b>Research and Development Solutions (RDS), LLC 3604 Collins Ferry Road, Suite 200 Morgantown, WV 26505-2353 DUNS: 14-398-8405</b>	8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)
	9. DISCOUNT FOR PROMPT PAYMENT

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:	ITEM See Article G 2
11. SHIP TO/MARK FOR <b>See Section D.</b>	12. PAYMENT WILL BE MADE BY <b>See Clause G.2</b>

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) <input type="checkbox"/> 41 U.S.C. 253(c)	14. ACCOUNTING AND APPROPRIATION DATA
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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
ALL	See Clause B.1				See Clause B.2
15G. TOTAL AMOUNT OF CONTRACT					See Clause B.3

SEC.	DESCRIPTION	PAGE(S)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE			PART II - CONTRACT CLAUSES		
A	SOLICITATION/CONTRACT FORM	1	I	CONTRACT CLAUSES	33-156
B	SUPPLIES OR SERVICES AND PRICES/COSTS	2-6	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH		
C	DESCRIPTION/SPECS /WORK STATEMENT	7	J	LIST OF ATTACHMENTS	157-217
D	PACKAGING AND MARKING	8	PART IV - REPRESENTATIONS AND INSTRUCTIONS		
E	INSPECTION AND ACCEPTANCE	9-10	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
F	DELIVERIES OR PERFORMANCE	11	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
G	CONTRACT ADMINISTRATION DATA	12-15	M	EVALUATION FACTORS FOR AWARD	
H	SPECIAL CONTRACT REQUIREMENTS	16-32			

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein (Attachments are listed herein)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
19A. NAME AND TITLE OF SIGNER (Type or print) <b>JEFFERSON C. NEFF Business Mgr.</b>	20A. NAME OF CONTRACTING OFFICER <b>James C. Knudsen</b>
19B. NAME OF CONTRACTOR <b>Jefferson C. Neff</b>	20B. UNITED STATES OF AMERICA
19C. DATE SIGNED <b>9/24/04</b>	20C. DATE SIGNED <b>9/24/04</b>
By <b>Jefferson C. Neff</b> (Signature of person authorized to sign)	By <b>James C. Knudsen</b> (Signature of person authorized to sign)

DE-AM26-04NT4187 – RESEARCH AND DEVELOPMENT SUPPORT SERVICES FOR THE NATIONAL ENERGY TECHNOLOGY LABORATORY

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**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES BEING ACQUIRED - TASK ORDERS (JUNE 2003)**

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the following items of work for the term specified in Part I, Section F and as specified in actual task orders awarded in accordance with Part I, Section H, clause entitled "Ordering Procedures:"

Item 1 - Services entitled "Research and Development Support (RDS) Services for the National Energy Technology Laboratory (NETL)" in accordance with Part III, Section J, Attachment A, Statement of Work.

Item 2 - Reports as prescribed in accordance with Part III, Section J, Attachment B, "Reporting Requirements Checklist"

**B.2 TOTAL ESTIMATED COST/MAXIMUM AVAILABLE PERFORMANCE AWARD FEE (MAY 2003)**

(a) The total estimated costs are as follows:

Base Period (3 Years)	\$ [REDACTED]
First Option Period (2 Years)	\$ [REDACTED]

(b) Total maximum available award fee is as follows:

Base Period	\$ [REDACTED]
First Option Period	\$ [REDACTED]

Under cost plus award fee task orders, all fee shall be at risk, there shall be no base fee.

**B.3 CEILING PRICE OF CONTRACT (JUL 1991)**

The ceiling price of this contract, inclusive of Fixed and Award Fee is \$127,452,956. All orders including CPFF, CPAF, and FFP count against this ceiling.

**B.4 ESTIMATED LEVEL OF EFFORT (JUNE 2003)**

The Contractor shall provide the following estimated total Direct Productive Labor-Hours (DPLH):

PERIOD	DPLH*
Base Period (36 Months)	1,015,200
First Option Period (24 months)	676,800

\*DPLH is based on 1800 man-hours per year

**B.5 TYPES OF TASK ORDERS (JUNE 2003)**

Task Orders issued under this contract will be either Cost-Plus-Fixed-Fee, Cost-Plus-Award-Fee, or Firm Fixed Price Task Orders in accordance with the terms and conditions set forth in Section H of this contract. Task Orders issued under this contract will be performance-based. Each task order will describe performance requirements, performance standards, and the means of performance measurement.

(a) Cost-Plus-Award-Fee Task Orders



Task Orders may be issued to require the Contractor to complete a specific task (or tasks) for cost plus an award fee. The award fee earned shall be determined on an individual task basis. If a task will be issued on an award fee basis, the Contractor will be requested to propose the award fee amount at the time proposals are requested. The maximum available award fee earned for each task order is subject to negotiation. Maximum available award fee for cost plus award fee tasks issued shall not exceed the maximum available award fee stated in Provision B.2.

(b) **Cost-Plus-Fixed-Fee Task Orders**

Task Orders may be issued to require the Contractor to complete a specific task (or tasks) for cost plus a fixed fee. The fixed fee shall be determined on an individual task basis. If a task will be issued on a cost-plus-fixed-fee basis, the Contractor will be requested to propose the fee amounts at the time proposals are requested for the task. The amount of fixed fee for each task order is subject to negotiation.

(c) **Firm Fixed Price Task Orders**

Task orders may be issued to require the Contractor to complete a specific task (or tasks), for a firm fixed price. The Contractor's task order proposal for firm fixed price completion task orders shall indicate the proposed DPLH and the labor categories utilized. Other direct costs and travel costs required for performance of the task order shall be included in each specific task order proposal, as well as any profit.

**B.6 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT. (MAR 2000)**

(a) The Government may unilaterally extend the term of this contract by written notice to the Contractor within the term of the contract provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of the option under this clause, shall not exceed sixty (60) months.

**B.7 OPTION TO EXTEND SERVICES**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted in accordance with the pricing requirements of FAR 8.707. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of the end of the contract period. Primary application of this authority would occur if delays in awarding a successor contract at the scheduled completion of this award were apparent.

**B.8 DISTRIBUTION OF PERFORMANCE AWARD FEE (JUNE 2003)**

The total amount of award fee available for cost plus award fee tasks issued under this contract is assigned as follows:

FEE PERIOD	EVALUATION BEGINNING DATE	EVALUATION ENDING DATE	PLANNED VALUE	AVAILABLE AWARD FEE	FEE EARNED
1	12/01/2004	03/31/2005	*	*	*
2	04/01/2005	09/30/2005	*	*	*
3	10/01/2005	03/31/2006	*	*	*
4	04/01/2006	09/30/2006	*	*	*
5	10/01/2006	03/31/2007	*	*	*
6	04/01/2007	09/30/2007	*	*	*
7	10/01/2007	12/01/2007			

\*The Planned Value and Available Award Fee shall be filled in upon the completion of available award fee negotiations for each evaluation period. The Fee Earned column shall be filled in based on the amount of fee earned for each evaluation period identified.

In the event the Government exercises an option period, Fee Period 7 Evaluation Ending Date may be increased to include three months from the option period. In the event of contract termination, either in whole or in part, the amount of award fee available shall be a pro-rata distribution associated with evaluation period activities or events as determined by the Contracting Officer (CO).

**B.9 LIMITATION OF FUNDS -- COST PLUS AWARD FEE (JUNE 2003)**

Pursuant to FAR 52.232-22, "Limitation of Funds," total funds in the amount of \$[ will be identified upon issuance of the individual task orders ] are obligated herewith and made available for payment of allowable costs and award fee to be incurred from the effective date of this contract through the period estimated to end [ will be identified upon issuance of the individual task orders ].

**B.10 ANNUAL INDIRECT RATE SUBMISSIONS (MAY 1994)**

(a) Introduction

- (1) Indirect billing, revised billing (as necessary), and final rate agreements must be established between a Contractor and the Department of Energy (DOE) for each of the Contractor's fiscal years for the life of the cost reimbursement type contract. These indirect rate agreements allow a Contractor to recover indirect expenses incurred during a fiscal year for which final indirect rates have not been established.
- (2) Indirect billing and revised indirect billing rate proposals must represent the Contractor's best estimate of the anticipated indirect expenses to be incurred and the estimated allocation base for the current fiscal year in accordance with their approved accounting system. Revised billing rates allow a Contractor or DOE to adjust the approved billing rates, based upon updated information, in order to prevent significant over or under billings. Revised billing rates, once established, are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings which used the previously approved billing rates.
- (3) A final indirect rate proposal represents the indirect rate expenses actually incurred during a fiscal year and the actual business base experienced. Once established they are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings if the established final rates differ from the previously approved billing rates.

(4) FAR 42.703(a) stipulates that "A single agency [see FAR 42.705-1(a)] shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding upon all agencies and their contracting offices, unless otherwise specifically prohibited by statute." This single Government agency is referred to as the Cognizant Federal Agency (CFA). The CFA is normally the Federal agency which has the largest unliquidated contract dollar amount by fiscal year with a Contractor.

(5) The establishment of rates for the reimbursement of independent research and development/bid and proposal costs shall be in accordance with the provisions of FAR 31.205-18, "Independent Research and Development and Bid and Proposal Costs," and both FAR Subpart 42.10 and DEAR 942.10, "Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs."

(6) Sections (b) and (c) or (d) of this clause define the requirements to be followed by the Contractor in establishing indirect rates for contracts when DOE is the CFA and when DOE is not the CFA. Specific instructions for submittal of indirect rate proposals to agencies other than DOE must be obtained from the agency involved.

(b) Requirements whether or not DOE is the CFA

(1) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable sections of FAR Part 30, "Cost Accounting Standards," FAR Part 31 and DEAR 931, "Contract Cost Principles and Procedures," in effect as of the date of this contract.

(2) Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the CFA subject to acknowledgment by the DOE Indirect Rate Contracting Officer (IRCO). These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the CFA subject to acknowledgment by the DOE IRCO.

(3) The Contractor shall continue to use the latest DOE or CFA approved billing rate(s) which have been acknowledged by the DOE IRCO until those rates are superseded by establishment of final rates or more current billing rates. In those cases where current billing rates have not been established, the latest approved final rates shall be used for invoicing, unless it is determined by the DOE IRCO that use of said rates would not provide for an equitable recovery of indirect costs. In those instances the DOE IRCO will take whatever steps are necessary to establish rates that DOE considers to be reasonable for billing purposes.

(4) All Indirect Rate agreements and correspondence shall be submitted to:

U S. Department of Energy  
National Energy Technology Laboratory  
626 Cochrans Mill Road  
P.O. Box 10940  
Contracting Officer for Indirect Rate Cost Management  
Building 921-107  
Pittsburgh, PA 15236-0940

(c) Requirements when DOE is the CFA

(1) No later than 90 days after the close of its fiscal year, the Contractor shall identify to the DOE IRCO all of its contracts with Federal agencies, either as a prime or as a subcontractor (any level), and provide the following information for those contracts:

Name of Federal Agency  
Contract Number  
Contract Value (total and by fiscal year)  
Period of performance  
Type of contract (CPFF, FFP, etc )

(2) In accordance with the "Allowable Cost and Payment" clause (DEAR 952.216-7) the Contractor, as soon as possible but not later than 90 days after the close of its fiscal year, shall submit to the DOE IRCO, identified in paragraph (b)(4) of this clause, a proposal for final indirect rates based on the Contractor's actual costs for the period, together with all supporting data. The Contractor's failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of the vouchers.

(3) The settlement of the final indirect rates and indirect costs shall be accomplished prior to the Contracting Officer's approval of the final payment.

(4) Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the DOE IRCO. These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the cognizant DOE IRCO (see FAR 42.704).

(5) The Contractor shall provide to the DOE IRCO annually, no later than 30 days after the close of its fiscal year, a billing rate proposal for the ensuing fiscal year, with supporting data. Failure to provide the required rate proposals in a timely fashion may impact payment of vouchers and could ultimately result in suspension of the indirect expense portion of vouchers.

(6) If the projected indirect expenses or bases change substantially during any fiscal year, the Contractor shall notify the DOE IRCO in writing and request an adjustment to the indirect billing rates. Upon review of the revised billing rate proposal the DOE IRCO may adjust the previously approved billing rates. Such adjustments will apply retroactively to all billings containing the previously approved rates for the fiscal year in question and the Contractor shall make all appropriate adjustments on its next voucher.

(d) Requirements when DOE is not the CFA

(1) When another Federal Agency or a different DOE Office has the CFA responsibility for the establishment of indirect rates with the Contractor, the Contractor shall provide a copy of the rate proposals, including all supporting documentation, submitted to the CFA. These submittals to DOE shall be within the time periods established within paragraphs (c)(2) and (c)(5) of this clause unless a written request for an extension is submitted by the Contractor and granted by DOE. Failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of vouchers.

(2) The Contractor shall provide copies of all rates established by that CFA and any correspondence related to indirect rates to the DOE IRCO. It is imperative that the DOE IRCO be provided signed copies of all rate agreements established by the CFA since these agreements must be in the possession of, reviewed, and acknowledged by the DOE IRCO before any rates contained therein can be used by the Contractor for cost reimbursement.

**SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**C.1 STATEMENT OF WORK (NOV 1997)**

The Statement of Work is located in Part III -- Section J, Attachment A to this contract.

**C.2 REPORTS (MAY 1998)**

Reports shall be prepared and submitted in accordance with the reporting requirements described in Part III -- Section J, Attachment B. ~~ADDITIONAL~~ reports and deliverables may also be identified on individual task orders.

## **SECTION D - PACKAGING AND MARKING**

### **D.1 PACKAGING (FEB 1999)**

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).

Except for those reports required by the Reporting Requirements Checklist of the contract, which are coded by A (As required) where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded A.

### **D.2 MARKING (JAN 1999)**

Each package, report or other deliverable shall be accompanied by a letter or other document which:

- (1) Identifies the contract by number under which the item is being delivered.
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement

For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 INSPECTION (NOV 1997)

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

### E.2 ACCEPTANCE (MAR 1999)

Final acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer.

### E.3 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT. (APR 1984)

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

### E.4 52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996)

(a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a

manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.



## SECTION F - DELIVERIES OR PERFORMANCE

### F.1 PERIOD OF PERFORMANCE (BASE CONTRACT WITH OPTION(S)) (JUNE 2003)

#### BASE CONTRACT

The work to be performed under the Base Contract (Reference Part I, Section, B) shall commence on the effective date of the contract and shall continue for **thirty-six (36) months**.

NOTE: The Government may elect not to exercise the option.

#### OPTION I

If Option I is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of **twenty-four (24) months** from the effective date of the exercised option.

### F.2 PRINCIPAL PLACE OF PERFORMANCE (JULY 2003)

The principal place of performance under this contract shall be at the National Energy Technology Laboratory located in Morgantown, WV and Pittsburgh, PA. NETL is a geographically dispersed organization, therefore the Contractor may be required to travel between, and provide services to various other NETL or DOE locations in the United States.

### F.3 52.242-15 STOP-WORK ORDER. (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

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

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

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

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

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

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **G.1 CORRESPONDENCE PROCEDURES (FEB 2000)**

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence

Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Contracting Officer's Representative, with an information copy of the correspondence to the DOE Contract Specialist.

(b) Property Correspondence

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract's Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer's Representative and the DOE Contract Specialist.

(c) Indirect Rate Correspondence

All correspondence relating to the establishment, revision, and negotiation of billing and final indirect cost rates shall be addressed to the Contracting Officer for Indirect Cost Rate Management, with information copies of the correspondence to the DOE Contract Specialist.

(d) Correspondence on Patent or Technical Data Issues

Correspondence concerning patent or technical data issues shall be addressed to the Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

Information copies of correspondence being sent to the Intellectual Property Law Division shall also be sent to NETL's Patent Attorney, the DOE Contract Specialist, and the Contracting Officer's Representative.

(e) Other Correspondence

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(f) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-AC26-04NT41817, and identifying the specific contract action requested.

### **G.2 SUBMISSION OF VOUCHERS/INVOICES (APR 2001)**

(a) Voucher Form (SF 1034)

In requesting reimbursement, Contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal). Electronic versions of the SF1034 can be found on NETL's website at <http://www.netl.doe.gov/business/forms/forms.html>. Acceptable substitutes for the forms (which provide

the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

- (1) Name and address of Contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or service
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms
- (6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Supporting Documentation

The Invoice Detail Report referenced in Section J, Attachment B, must be provided as support documentation with each invoice. (Note: The Invoice Detail Report is a required to be submitted as both backup to the invoice and as a required report in accordance with the Reporting Requirements Checklist contained in Part III, Section J, Attachment B).

Direct costs (e.g., labor, equipment, travel, supplies) claimed for reimbursement must be adequately supported. The level of detail provided must clearly indicate where the funds were expended. For example, support for labor costs must include the labor category (e.g., program manager, senior engineer, technician) the hourly rate, and the labor cost per category; equipment costs must be supported by a list of the equipment purchased, along with the item's cost; supporting data for travel must include the destination of the trip, number and labor category of travelers, transportation costs, per diem costs, and purpose of the trip; and supplies should be categorized by the nature of the items (e.g., office, lab, computer) and the dollar amount per category.

Indirect rates used for billings must be clearly indicated, as well as their basis of application. When the cognizant Administrative Contracting Officer (ACO) or auditor approves a change in the billing rates, include a copy of the approval.

(c) Submission of Voucher

Submit the original voucher including the Supporting Documentation to the following payment office:

U. S. Department of Energy  
Oak Ridge Financial Services Center  
P. O. Box 4787  
200 Administration Road  
Oak Ridge, TN 37831

In addition, submit two copies of the voucher including the Supporting Documentation to the following address:

U. S. Department of Energy  
National Energy Technology Laboratory  
ATTN: Accounts Payable  
3610 Collins Ferry Road, P.O. Box 880  
Morgantown, WV 26507-0880

(d) Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained). The period of performance covered by vouchers should be the same as covered by any required monthly technical progress reports and/or monthly cost reports.

(e) Payment Method

In accordance with Mandatory Information for Electronic Funds Transfer Payment, payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(f) Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the Contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

(g) Status of Payments

The Oak Ridge Financial Service Center (ORFSC) has a system via Internet, in which Contractors can request information about payments by invoice, by contract number, and/or by paid date. The system is called Vendor Inquiry Payment Electronic Reporting System (VIPERS) and is available to Contractors at the following website: <http://finweb.oro.doe.gov/vipers.htm>. Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

**G.3 PAYMENT OF PERFORMANCE AWARD FEE (JUNE 2003)**

The Government will promptly make payment of any award fee earned upon submission by the Contractor to the Contracting Officer, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made based upon an authorization letter from the Fee Determination Official (FDO) and without the need for a contract modification.

**THE FOLLOWING CLAUSE PERTAINS ONLY TO COST PLUS FIXED FEE TASK ORDERS ISSUED AGAINST THIS CONTRACT.**

**G.4 PAYMENT OF FIXED FEE (LEVEL-OF-EFFORT TASK ORDERS) (OCT 2003)**

The fixed fee specified in the Task Order clause entitled, "Estimated Cost and Fixed Fee" shall be paid to the Contractor on the basis of the number of Direct Productive Labor Hours (DPLH) delivered relative to the number of DPLH set forth in the clause entitled, "Level of Effort."

The amount of fixed fee earned and payable under the task order, prior to final payment, shall be the amount derived by dividing the total number of DPLH delivered to date under the task order by the total number of DPLH to be delivered under the task order, and multiplying the result by the total fixed fee set forth in the clause; provided, however, that this amount does not exceed 85% of the fixed fee specified in the Task Order clause entitled "Estimated Cost and Fixed Fee" (See FAR 52.216-8 Fixed Fee).

The total amount of fixed fee earned under this task order upon its expiration shall be 100% of the fixed fee set forth in the clause entitled "Estimated Cost and Fixed Fee"; provided, however, that the number of DPLH delivered under the task order equals or exceeds 90% of the total DPLH to be delivered under the task order (See the clause entitled "Level of Effort").

**G.5 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR (DEC 1999)**

A support service Contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this Contractor has access to your business confidential cost/rate information. A special provision in this Contractor's award requires the confidential treatment by all Contractor employees of any and all business confidential information of other Contractors and financial assistance recipients to which they have access.

**G.6 ACCOUNTABILITY OF COSTS/SEGREGATION OF TASK ORDERS (JUNE 2003)**

All costs incurred by the Contractor under this contract shall be segregated by each Task Order. The Contractor shall, therefore, establish separate "Job Order Accounts and Numbers" for each task order issued and shall record all incurred costs in the appropriate job order account assigned each Task Order.

There shall be no co-mingling of costs between Task Orders.

## SECTION H - SPECIAL CONTRACT REQUIREMENTS

### H.1 CONSECUTIVE NUMBERING (JAN 1999)

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

### H.2 TECHNICAL DIRECTION (JUNE 1998)

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
  - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
- (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the contract clause entitled "Changes";
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract; or
  - (2) Advise the Contractor within a reasonable time that the Government will issue a written change order.

- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes - Alternate I".

### **H.3 MODIFICATION AUTHORITY (NOV 1997)**

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work,
- (b) waive any requirement of this contract, or
- (c) modify any term or condition of this contract.

### **H.4 GOVERNMENT PROPERTY AND DATA (SEP 2003)**

- (a) Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this contract any equipment (including office equipment), furniture, fixtures or other personal property items.
- (b) Acquisition Authorization Requirements
  - (1) In the course of performance of this contract, the Contractor may only acquire and direct charge to this contract such items on the "Government-Furnished Property List" and only as directed by the CO or their designee.
  - (2) In the event the Contractor acquires and direct charges property to this contract, the Contractor shall be required to ensure the property is entered into the Property Administration Management System (PAMS) and indicates the Purchase Order number utilized to acquire the property.
  - (2) The Contractor may request authorization for acquisition of additional items from the Contracting Officer. Any such request shall include an analysis of the most economical method of acquisition (e.g., lease versus purchase) and shall describe the material equity arising from any proposed lease arrangement, such as option credits.
  - (3) Any changes in the acquisition authorization shall be reflected in a revision of the "Government-Furnished Property List".
  - (4) Authorization to acquire does not constitute consent to the placement of a subcontract.
- (c) Government-Furnished Property and Data
  - (1) Except as otherwise authorized by the Contracting Officer in writing, only that property and data specifically included in the "Government-Furnished Property List" shall be furnished.
  - (2) The current "Government-Furnished Property List" is located on the Internet at <http://www.netl.doe.gov/business/solicit/ssc2003/index.html> and will be available for Contractor access at this site during the solicitation phase of this contract.
  - (3) The "Government-Furnished Property List" is considered a living document and is maintained through the Property Administration Management System (PAMS). The Contractor will designate an authorized representative who will have limited access to the PAMS for the purpose of updating the property list and acquiring property reports. The most current "Government-Furnished Property List" can be obtained through the report capability in the PAMS as property

assigned to this contract.

- (4) No less frequently than annually, the Contractor will complete a physical inventory of property furnished. The inventory will be reconciled with the Government and adjustments, if necessary, will be made to the PAMS.
- (5) The "Government-Furnished Property List" as maintained in the PAMS is incorporated into this contract by reference in its entirety. No hard copy of the Government-Furnished Property List will be attached to this contract.
- (6) Administration of the Government-Furnished Property and the PAMS will be the responsibility of the Organizational Property Management Officer and/or the Government Property Administrator.

(d) Reporting Requirements

The reports required shall be submitted in accordance with 48 CFR 945 and the reporting requirements set forth in Part III, Section J, Attachment B. The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not listed on the attachments referenced above.

**H.5 USE OF GOVERNMENT-OWNED EQUIPMENT/FACILITIES (JAN 2000)**

The Contractor is authorized to use on a no-charge, non-interference, basis in the performance of this contract, the Government-owned equipment/facilities indicated below. Such use is authorized on the basis that it will not interfere with the performance of the Government contract(s) for which such property was provided, and, unless otherwise stipulated, shall be in accordance with the terms and conditions thereof.

A list of Government-Furnished Property that the Contractor is authorized to use is provided in the electronic reading room located at <http://www.netl.doe.gov/business/solicit/ssc2003/index.html>. This reading room will only be available during the solicitation phase of this contract. After contract award the Government-Furnished Property List will be maintained in accordance with Clause H.4, Government Property and Data.

Other associated Government furnished items for the on-site personnel include: office space, office furniture, local area network services, parking facilities, and other services as described in the clause entitled "Government Provided Services".

**H.6 MOVEMENT OF GOVERNMENT PROPERTY OFF-SITE -- NETL (JAN 2000)**

No Government-owned property, equipment, or materials will be removed from the National Energy Technology Laboratory without prior written permission from the Contracting Officer or his/her designee.

**H.7 ORDERING PROCEDURE (DEC 2000)**

Performance under this contract shall be subject to the following ordering procedure:

The Contractor shall incur costs under this contract only in the performance of Task Orders and revisions to Task Orders issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer (CO).

The Contracting Officer will issue a Task Proposal Request to the Contractor identifying (1) the type of task order and the task to be performed, (2) the task performance requirements, (3) the desired schedule of performance, (4) deliverables and required delivery dates, and (5) any special instructions. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, view graphs, and other forms of presentation as appropriate. If appropriate, based on 48 CFR 945, property which is Government-furnished or Contractor-acquired will also be listed in the property schedules of this contract as well as in the individual Task Orders. If appropriate, based on 48 CFR 945, property which is Government-furnished or Contractor-acquired will also be listed in the Government-



The following is a list of key personnel that have been approved for this contract:

<u>Name</u>	<u>Title</u>
[REDACTED]	Program Manager
[REDACTED]	Business Office Manager
[REDACTED]	University Consortium Manager
[REDACTED]	Senior Functional Manager, Partnership Development, R&D Planning/Analysis
[REDACTED]	Senior Functional Manager, R&D Project Planning and Analysis, Process Engineering Design and Analysis
[REDACTED]	Senior Functional Manager, R&D Operations, Computational Research, Simulation and Visualization
[REDACTED]	Senior Functional Manager, ES&H Assurance

Prior to diverting any of the specified individuals, the Contractor shall notify the Contracting Officer not less than thirty (30) calendar days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the Contracting Officer, with concurrence of the Contracting Officer's Representative.

#### **H.9 TRAVEL AND PER DIEM COSTS (FEB 1998)**

Costs incurred by Contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by Subchapter I of Chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any revision of such subchapter; and are allowable pursuant to the "Allowable Cost and Payment" clause, FAR 52.216-7.

Foreign travel shall be subject to DEAR 952 247-70.

#### **H.10 TRAVEL (EDUCATIONAL INSTITUTIONS) (SEPT 1998)**

Costs incurred by Contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the charges normally allowed by the Contractor's institutional travel policy and are in accordance with the limits and principles set by the OMB Circular A-21 for such costs.

#### **H.11 PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS AND/OR CONSULTANTS (OCT 1998)**

The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract, including consultants, for which advance notification is required under FAR 52.244-2, "Subcontracts".

Any request for subcontract/consultant approval shall include the elements prescribed by FAR 52.244-2, including subcontractor/consultant Representations and Certifications. For consultants the Contractor will obtain and furnish information supporting the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultants to others for performing consulting services of a similar nature.

Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts and/or consultants shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

Furnished Property List of this contract as well as in the individual Task Orders.

Task Orders will be issued on forms specified and provided by the Government. Task Orders will be numbered. A modification to the Task Orders will be identified by an alpha designation following the existing Task Order number indicating the revision sequence.

The Contractor shall submit within ten (10) calendar days, after receipt of each Task Proposal Request, to the Contracting Officer, a one-time Contractor Task Management Plan. The Task Management Plan is the Contractor's overall estimate for the completion of the Task Order and shall include the following:

- (1) Directive Productive Labor Hours (DPLH) by labor category on a monthly basis, including overtime (if authorized), and total DPLH, including subcontractor and consultant DPLH, if applicable.
- (2) Travel, training, equipment, and materials estimate.
- (3) Estimated computer time and cost, if applicable.
- (4) Other pertinent information (e.g., indirect costs, inter-divisional transfers).
- (5) Estimated subcontractors and consultants costs, including DPLH if applicable. (Subcontractor and consultant costs need to be provided at same level of detail as the prime)
- (6) The total estimated cost, the proposed maximum award fee or fixed fee for completion of the Task Order, and a monthly cost plan. For Fixed Price Task Orders, the Contractor will provide a total firm fixed price.
- (7) Date of commencement of work, and any necessary revision to the schedule of performance.
- (8) Information responsive to any special instruction in the Task Order Request.

Task Proposal requests and Task Orders will be issued in writing, unless otherwise authorized by the Contracting Officer.

The Contractor's Task Management Plan is subject to the review of the Contracting Officer or designee. After a Task Order is issued and the Contractor becomes aware that the estimated cost or level of effort will vary from the Task Management Plan (more than + or - 10% variance), then the Contractor shall promptly submit to the Contracting Officer or designee a revised Task Management Plan with explanatory notes.

This ordering procedure is of a lesser order of precedence than the "Limitation of Cost," "Limitation of Funds," "Completion Dates," "Term of Contract," or "Level of Effort" clauses of the contract. The Contractor is not authorized to incur costs on Task Orders which are not in compliance with any of those clauses of the contract.

#### **H.8 KEY PERSONNEL/PROGRAM MANAGER (MAR 1998)**

The key personnel, which include the Program Manager, specified below, are considered to be essential to the work being performed under this award; moreover, any changes to these personnel require prior DOE Contracting Officer's written approval.

The Program Manager shall serve as the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the DOE Contracting Officer's Representative may issue within the terms and conditions of the contract.

The Contractor is hereby given consent to the placement of the following subcontracts, which were evaluated during negotiations:

Carnegie Mellon University  
WVU Research Corporation  
University of Pittsburgh  
ICF Consulting  
Energetics  
Augusta Systems  
Fluent  
Leonardo Technologies

Notwithstanding this consent, the Contractor shall ensure compliance with FAR 52.244-2. All subcontracts and/or consultants must contain all applicable flow-down clauses contained in Part II, Section I.

#### **H.12 SUBCONTRACTOR FACILITIES CAPITAL COST OF MONEY (FEB 1998)**

To the extent a subcontractor proposes to recover as an element of proposed cost any Facilities Capital Cost of Money (FCCOM) from a higher tier subcontractor or from the prime Contractor, the FCCOM cost principle (FAR 31 205-10) shall apply to subcontracts and new scope modifications issued thereto which are fee bearing cost reimbursement type or negotiated fixed price type.

To the extent a subcontractor is eligible to recover yet does not propose as an element of proposed cost any Facilities Capital Cost of Money (FCCOM) from a higher tier subcontractor or from the prime Contractor, the higher tier subcontractor or the prime Contractor shall insert the following provision in any such subcontract or new scope modification issued thereto:

Waiver of Facilities Capital Cost of Money (FAR 52.215-17, OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

The Contractor agrees to insert the substance of this clause, including this paragraph (c) altered as necessary for proper identification of the parties, in any subcontract placed hereunder which is a fee bearing cost reimbursement or negotiated fixed price type.

#### **H.13 LEVEL OF EFFORT (JUNE 2003)**

In the performance of Task Orders issued pursuant to the ordering procedure of this contract, the Contractor shall provide that estimated total of Direct Productive Labor-Hours (DPLH) which is specified in Part I, Section B during the term of the contract. The term of the contract is defined as the total contract period, including all exercised options. Direct Productive Labor-Hours (DPLH) are defined as actual work hours exclusive of vacation, holiday, sick leave, and other absences.

The DPLH delineated in Part I, Section B, are provided for estimating purposes. Changes in programmatic requirements may cause a substantial increase or decrease in the number of DPLH identified in Part I, Section B. The Contractor shall be required to provide all DPLH which may be needed to complete the Task Orders issued during the term of the contract. However, the Contractor shall not proceed beyond the estimated DPLH unless authorized to do so in a contract modification issued by the Contracting Officer.

#### **H.14 PERFORMANCE EVALUATION PLAN (PEP) (JUNE 2003)**

The Contractor's performance will be evaluated in accordance with the Performance Evaluation Plan included in Part III, Section J, Attachment C. The Plan includes the criteria to be considered under each area evaluated and the

percentage of award fee available for each area. The Plan may be revised unilaterally by the Government with notification of the change(s) provided to the Contractor at least fifteen (15) calendar days prior to the start of the evaluation period to which the change will apply. The Plan may be revised bilaterally anytime throughout performance of the contract.

#### **H.15 PERFORMANCE BASED AWARD FEE (SEP 2003)**

##### **(a) AWARD FEE DETERMINATION**

- (i) The Government shall, at the conclusion of each evaluation period, evaluate the Contractor's performance for a determination of performance based award fee earned. The Government will validate, by appropriate means, the information in the Contractor's self evaluation.
- (ii) The Contractor agrees that the determination of performance based award fee earned will be made solely by the Government FDO and such determination is binding on both parties.
- (iii) The evaluation of the Contractor's performance shall be in accordance with the Government's Performance Evaluation Plan (PEP) as indicated in Clause H.15 entitled "Performance Evaluation Plan (JUNE 2003)". The Contractor shall be promptly advised in writing of the FDO's determination and the reasons why the performance fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government in accordance with the (PEP), the FDO may also consider any information available to him or her which relates to the Contractor's performance of contract and order requirements, regardless of whether or not those requirements are specifically identified in the PEP. To the extent the Contractor does not perform those requirements, the FDO may reduce the fee determination. In the event that the Contractor's performance is considered unacceptable in any area of performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her sole discretion determine the Contractor's overall performance to be unacceptable, and accordingly may withhold the entire performance fee for the evaluation period.

(By way of example, in the ES&H area, the FDO may withhold the entire performance fee for the evaluation period in which the contractor's negligent or poor performance results in: (1) creation of a dangerous work environment; (2) liability, or risk thereof, to the Government; (3) death or injury to one or more workers; or, (4) notice(s) of violations being issued by regulatory agencies.)

- (iv) Any unearned award fee from each evaluation period shall not be eligible to be earned in any future period(s).

##### **(b) CALCULATION OF AVAILABLE AWARD FEE**

The available fee pool will be established on each cost plus award fee task order issued under this agreement prior to the beginning of the evaluation period based on the Contractor's proposed task management plan(s). The pool will be expressed as a discreet dollar amount, not as a percentage of the plan, and will be based on the amount negotiated and agreed upon. Upon completion of the review and adjustment process identified in paragraph (c) below, the plan, as adjusted, will be used as the basis for establishing the available fee pool for the next evaluation period.

##### **(c) REVIEW AND ADJUSTMENT OF AVAILABLE AWARD FEE**

A meeting with the COR, CO, and Contractor will be held immediately following release of the Cost Management Report (CMR) for the fourth month of the evaluation period to review, on a task order by task order basis, any significant variances between planned costs and actual costs incurred. For the first evaluation period, the meeting will be held following the release of the CMR for the third month. The COR and the Contractor will provide the CO with information concerning the variance(s) such that a determination may be made as to whether an adjustment in

the fee pool for a particular task order is appropriate. Variances between planned and actual costs in task order performance are assumed to fall into one of the following three categories:

- (i) Actuals are less than planned due to Contractor management practices and cost saving efforts. No adjustment to the fee pool would be justifiable in this case. Overruns attributable to the Contractor will not increase the available fee pool.
- (ii) The work schedule, for whatever reason, has slipped, causing the work and its associated costs to move to a future performance period. In this case, the fee dollars should migrate with the work and a straight-line adjustment to the available fee would be appropriate.
- (iii) Actuals may underrun plan due to imprecise or changing scope. Some adjustment to the pool should be made, but a straight line adjustment may not be appropriate. Overruns that can be attributed to scope issues may result in an increase to the available fee pool.

Any adjustments to the available fee pool will be incorporated into a modification prior to the closing of the evaluation period.

#### **H.16 CONFIDENTIALITY OF INFORMATION (MAY 1998)**

To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (a) Information which, at the time of receipt by the Contractor, is in the public domain;
- (b) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (c) Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (d) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

This clause shall flow down to all subcontracts

**H.17 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (JUNE 1998)**

The Representations, Certifications and Other Statements of the Offeror for this contract are hereby incorporated by reference.

**H.18 MINIMUM WAGE DETERMINATION AND FRINGE BENEFITS (NOV 1997)**

In the performance of this contract the Contractor shall comply with the requirements of the following U.S. Department of Labor Wage Determinations which are included in Part III, Section J, Attachment E to this contract.

<u>Number</u>	<u>Revision No.</u>	<u>Date</u>
1994-2451	24	6/4/2003
1994-2573	20	5/30/2003
1999-0169	2	10/01/2003
1999-0577	3	05/01/2003
1999-0575	2	03/18/2003

There are currently two Collective Bargaining Agreements (CBAs) for each of the Morgantown and Pittsburgh sites. In accordance with the Department of Labor, where identical labor categories appear in more than one CBA for the same geographic area the higher wage rate prevails.

**H.19 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (MAY 2001)**

The Contractor shall cooperate fully with all other on-site DOE Contractors (including, but not limited to, support service, architect and engineering, janitorial, computer operation Contractors, or consultants) and Government employees, and carefully fit its own work to such other work as may be directed by the Contracting Officer or the Principal Contracting Officers Representative. The Contractor shall not commit, or permit, any act which will interfere with the performance of work by any other Contractor or by Government employees.

**H.20 INSURANCE -- MINIMUM REQUIREMENTS (JULY 2000)**

In accordance with FAR 52.228-7 (Section I), the Contractor shall provide insurance in the minimum amounts as set forth below. The required amount of insurance to be carried by the Contractor under this section may be changed upon the Government's written notice to the Contractor.

(a) Worker's Compensation and Employer's Liability.

Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. The Contractor shall obtain employer's liability coverage of at least \$100,000.

(b) General Liability.

The Contractor shall obtain bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(c) Automobile Liability.

The Contractor shall obtain automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all

automobiles, including Government furnished vehicles, used in connection with performing the contract. The Contractor shall obtain coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

#### **H.21 POSITION QUALIFICATIONS (APR 1984)**

Contractor direct labor personnel assigned to the performance of this contract shall satisfy as a minimum the applicable labor category qualifications, both education and experience, set forth in the "Position Qualifications" located in Part III, Section J, Attachment D to this contract, except as the Contracting Officer may authorize.

#### **H.22 COMMUNITY COMMITMENT (JUNE 2003)**

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

#### **H.23 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) USAGE (NOV 1997)**

ADPE requirements which were not included in the Contractor's original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer. Whenever Contracting Officer written consent is required, the Contractor will furnish to the Contracting Officer information concerning the need for and selection of such ADPE, the specific make(s) and model(s), and the lease versus purchase determination.

#### **H.24 IDENTIFICATION BADGES - NETL (JAN 2000)**

All personnel working at the National Energy Technology Laboratory will be required to wear identification badges at all times. Identification badges will be assigned to a Contractor official for issuance to the personnel employed for work under this contract.

#### **H.25 CONSERVATION OF UTILITIES (JUNE 2003)**

The Contractor shall instruct Contractor employees in utilities conservation practices. The Contractor shall operate under conditions that preclude the waste of utilities.

The Contractor shall use lights only in areas where and at the time when work is actually being performed except in those areas essential for purpose of safety and security.

#### **H.26 GOVERNMENT PROVIDED SERVICES (JUNE 2003)**

The Government shall provide the following on-site services. The Contractor shall use these services for official use only, in performance of the required services specified in this SOW.

- (a) Utilities: The Government shall provide electricity, water, lights, sewage, and heating or cooling
- (b) Mail Distribution: The Government shall provide mail pick-up and delivery of official mail.
- (c) Postage: Government-provided postage is restricted to official correspondence.
- (d) Telephone: Telephones shall be provided for Contractor-personnel to make official local and long distance calls. The Contractor shall be responsible for reimbursing the Government for telephone service calls to repair, modify, replace, etc due to Contractor employee negligence, misuse, or damage.

- (e) **Custodial Service:** The Government shall provide custodial services to include emptying of trash cans and vacuuming and shampooing of carpeted areas in Government-furnished facilities.
- (f) **Refuse Collection:** The Government shall provide refuse collection at Government-furnished facilities.
- (g) **Insect and Rodent Control:** The Government shall provide insect and rodent control in Government-furnished facilities. The Contractor shall notify the COR if the facilities appear to be infested.
- (h) **Printing and Reproduction:** Office copiers shall be provided according to Government policies for their use. The Contractor shall use NETL's Graphics and Printing facilities for the productions of documentation required in support of this SOW.
- (i) **Equipment Maintenance:** The Government shall maintain equipment whose maintenance is not obtained through this contract.
- (j) **Security Police and Fire Protection:** In case of emergency, the Contractor shall notify the Security Office immediately. The Contractor shall obtain these phone numbers from the COR and keep them posted and up to date at all times.
- (k) **Transportation:** NETL has a pool of GSA vehicles, to which the Contractor will have reasonable access for Official Government business in performance of services required in this SOW (e.g. travel and training).

**H.27 SECURITY AND PERSONNEL REQUIREMENTS (JUNE 2003)**

(a) **GENERAL RESPONSIBILITIES**

The Contractor shall be responsible for complying with the provisions of NETL's Security Program.

(b) **CLASSIFIED MATERIAL**

The Contractor, if involved with classified activities, shall abide by all policies of the Department of Energy and NETL. Services provided by the Contractor off-site for other Government agencies may also require access to classified materials. This shall require appropriate security clearances for contractor personnel performing the services.

(c) **ACCESS TO FACILITIES**

The Contractor shall prohibit access to Government-furnished facilities of any persons other than authorized Government and Contractor employees, unless prior approval is obtained from the Contracting Officer (CO) or appropriate COR.

The Contractor shall maintain the security within the facility. Anyone entering the facility who does not have a valid NETL identity badge must be processed through NETL's Visitor Registration process at NETL's Security Office or main lobby and must obtain a visitor identification badge and be escorted by a NETL representative. All personnel who have not been issued a NETL identity badge shall be escorted.

(d) **PHYSICAL SECURITY**

The Contractor shall be responsible for safeguarding and securing all Government property provided for use under this contract. The Contractor shall notify the COR within 24 hours after discovery of any missing Government property.

(e) **KEY CONTROL**



The Contractor shall ensure there is adequate control of keys and access cards to preclude the loss, misplacement or unauthorized use and access to Government equipment and facilities. The Contractor shall not duplicate keys issued by the Government.

In the event the Contractor loses Government keys, the Government shall replace, or re-key, all keys or locks, as the Government deems necessary. The Government may deduct the total cost for replacing locks and keys from the monthly payment due the Contractor. In the event a master key is lost or duplicated, the Government shall replace all locks and keys for that system and deduct the total cost for replacement from the monthly payment due to Contractor; or at the Government's discretion, the Government shall require the Contractor to replace locks and keys to the COR's satisfaction.

The Contractor shall report any occurrence of a lost or misplaced key to the COR within 4 hours of discovering that a key has been lost or misplaced. The Contractor shall provide a follow-up report, in writing, to the COR within 24 hours.

The Contractor shall prohibit the use of Government-issued keys by any persons other than the Contractor's authorized employees.

(f) **COMBINATION CONTROL**

The Contractor shall ensure there is control of combinations for cipher locks. The Contractor shall notify the COR and security within one workday after termination of employment of all Contractor employees who have access to the combination. The Contractor shall establish and implement methods to ensure that no lock combinations are revealed to unauthorized persons. The procedures shall be included in the Contractors Quality Control Program.

(g) **PERSONNEL AND SECURITY**

1. Contractor shall establish and follow a written inbound and outbound employee process, to include timely entry of information into the Employee Tracking System and proper return of all government property and security related items
2. Contractor is responsible for ensuring all employees follow DOE and NETL Security Policies. Violations of such policies shall be addressed through the COR and in accordance with an established written policy.

(h) **INFORMATION SECURITY**

Information Security is addressed by NETL Procedure 471.2-1 Controlling Sensitive Unclassified Information. All information, whether stored in the computer, in hard copy form, or on other storage media, shall be protected from disclosure, and unauthorized modification or destruction at all times. Contractor personnel shall take all precautions to protect the information and programs and shall report all suspected violations to the COR or CSPM. Information processed and stored by these Information Resource systems shall include some information that must be safeguarded from disclosure and alteration. That information is subject to protection by the Privacy Act of 1974 or The Freedom of Information Act (5 USC, Section 552). The Contractor agrees, in the performance of this contract, to keep sensitive information in the strictest of confidence and to take reasonable measures to protect it from unauthorized modification or destruction, said information being the sole property of the Government. The Contractor also agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form, and not to authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to this information, while in his possession, to those employees needing such information to perform the work provided herein (e.g. on a "need to know" basis). The Contractor shall immediately verbally notify, and notify in writing before the close of business of the next day, the Government COR or the CO or his authorized representative, in the event that the Contractor has or has reason to suspect a breach of data security occurred.

### **H.28 INDIRECT COSTS (NOV 1997)**

Pending establishment of final indirect cost rates for any period, billing and reimbursement of indirect costs shall be made on the basis of provisional rates recommended by the cognizant Government auditor. When a rate change occurs, and after it has been audited and approved by the cognizant Government auditor, the Contractor shall inform the Contracting Officer by letter of the indirect rate change. This notification shall include a copy of the cognizant auditor's approval and the cost impact of the rate change on the program.

### **H.29 CONTRACTOR PRESS RELEASES (APR 1998)**

The DOE policy and procedure on news releases requires that all Contractor press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

### **H.30 PERMITS AND LICENSES (AUG 1999)**

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of ES&H approvals (e.g., permits and licenses) that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The COR shall be notified as specific items are added or removed from the list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

### **H.31 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) – PRIOR APPROVALS (JUNE 2001)**

The National Environmental Policy Act of 1969 (NEPA) requires that all Federal agencies consider the impacts of their projects on the human environment. As part of the DOE's NEPA requirements, the Contractor shall be required to supply to the DOE certain environmental information. DOE funds may only be expended by the Contractor on preliminary designs/drawings and/or environmental assessment activities in support of the NEPA determination process, or in a manner consistent with 40 CFR 1506.1, until DOE notifies the Contractor that all NEPA requirements have been satisfied. In the event that the Contractor expends its own or third party funds on activities not authorized by this provision, such expenditures are entirely at the Contractor's risk that DOE's NEPA analysis will support such activities.

### **H.32 ENVIRONMENTAL MANAGEMENT SYSTEM POLICY AND ENVIRONMENTAL ASPECT CONSIDERATIONS (ISO 14001) IN NETL CONSTRUCTION AND ON-SITE CONTRACTS (MAR 2003)**

The Contractor must be knowledgeable of NETL Environmental Management System (EMS) policy and Environmental Aspect considerations as these relate to the work to be performed. The Contractor must be aware of NETL's Environmental Aspects and how their work could adversely affect or create additional aspects. Specific information on NETL's system and policy can be accessed through NETL's internet address (<http://www.netl.doe.gov>).

Specifically, NETL Procedure 450.4-9 (Management of Environment, Safety and Health Aspects of Contracts and Financial Assistance Awards) and NETL Procedure 440.4-12 (ES&H Requirements for Off-Site Contractors Working at NETL) must be followed, as applicable. In addition, the following DOE/NETL form must be completed for on-site activities: Significant Environmental Impact Scoring Matrix (NETL Form 450.1-2) and ISO-14001 Screening Analysis Questionnaire (NETL Form 450.1-4).

### H.33 ENVIRONMENTAL, SAFETY, AND HEALTH ON-SITE SERVICE CONTRACTS (MAR 2003)

- (a) The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of his/her employees, DOE/NETL employees, and the public, and to prevent damage to the environment and DOE/NETL-owned materials, supplies, equipment, facilities, and any other DOE/NETL-owned property.
- (b) The Contractor shall comply, as a minimum, with the requirements of DOE/NETL's environment, safety, and health (ES&H) programs as implemented through DOE and its support Contractor staff. These programs are based on implementing DOE/NETL's Focused-Standards List, which is compendium of applicable Federal, state, and local regulations; consensus standards; and DOE directives. In particular, the Contractor shall, as a minimum, comply with the procedural, record-keeping, and reporting requirements of these DOE/NETL's ES&H programs and their supporting DOE/NETL's directives. The major reporting requirements are outlined in DOE Order 231.1, Environment, Safety, and Health Reporting, current version. Where conflict exists among the standards' requirements, the most protective shall be adopted, unless relief is provided by the CO. In order to provide consistent application of ES&H requirements across the DOE/NETL sites, the Contractor shall, to the maximum extent possible, utilize existing DOE/NETL directives.
- (c) The Contractor shall generate and implement an integrated safety management (ISM) plan describing how the Contractor will implement ISM philosophy, as outlined in DOE P 450.4, Safety Management Policy (current version) and Integrated Safety Management System Guide, DOE G 450.4-1, Volumes 1 and 2 (current version) into the planning, budgeting, execution, and assessment of work activities. The plan shall provide (1) a process approach to the integration of ISM's five functions (i.e. defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance) into its everyday work activities, and (2) a specific management approach to demonstrate ISM's seven guiding principles (i.e. workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities, balanced priorities, identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization). The Contractor shall discuss in this plan how the execution of the plan will successfully and cost-effectively integrate with NETL's own ISM, ES&H, and EMS/ISO programs. Performance metrics shall be included in the plan. The Contractor shall submit the plan to the Contracting Officer for review and approval within 30 days after the date of contract award. This plan shall be updated on an annual basis.
- (d) The Contractor shall adhere to applicable sections of DOE Order 450.1, Environmental Protection Program, current version (see <http://www.directives.doe.gov/serieslist.html> to access DOE Orders). The Contractor shall be knowledgeable of the specific NETL Environmental Management System (EMS) as outlined in NETL Order 450.1 – Environmental Management System, current version, and its requirements, including NETL's EMS policy, environmental aspects, environmental objectives, and environmental targets. In particular, the Contractor shall relate this information to their work to be performed in order to proactively implement NETL's environmental policy (i.e., prevent pollution, comply with ES&H regulations, improve continually, conduct safety analysis and reviews, and minimize wastes) and to manage the environmental aspects that are applicable to the planning and execution of their work. In addition, the following DOE/NETL forms must be completed for general and unique on-site activities: Significant Environmental Impact Scoring Matrix (NETL Form 450.1-2) and ISO 14001 Screening Analysis Questionnaire (NETL Form 450.1-4). Specific information on NETL's EMS and policy can be accessed through NETL's Internet address (<http://www.netl.doe.gov>).
- (e) The Contractor shall follow the applicable NETL directive(s) on conducting safety analysis and reviews (e.g., NETL Procedure 421.1-1, R&D Safety Analysis and Review System; NETL Procedure 421.1-2, Support Operations Safety Analysis and Review System, and/or NETL Procedure 421.1-3, Facility Safety Analysis and Review System, current version), and shall implement the requirements resulting from such analysis and review.

- (f) Contractor personnel shall take NETL ES&H mandatory training (e.g., mandatory due to the nature of job being performed or due to site-wide requirements). The Contractor shall give safety briefings to personnel and maintain records of attendance for periodic safety briefings conducted by supervisors.
- (g) The CO shall notify the Contractor, in writing, of any non-compliance with the provisions of this clause. After receipt of such notice, the Contractor shall immediately begin to take corrective action. In the event that the Contractor fails to comply with DOE/NETL's environment, safety, and health requirements, the CO may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for work resumption may be issued by the CO. The Contractor shall make no claim for an extension of time, or for compensation or damages by reason of, or in conjunction with, such work stoppage.
- (h) The Contractor shall include this environment, safety and health clause in all subcontracts requiring work at the DOE/NETL sites. However, such flow down of responsibility shall not relieve the Contractor of its obligation to assure compliance with the provisions of this clause.
- (i) The DOE or its authorized representative shall have the right to inspect any areas or facilities occupied by the Contractor.
- (j) The Contractor shall provide record keeping information, such as raw data, interpreted results, reports, correspondence, and other materials proving regulatory and standard compliance, according to DOE records management schedules.
- (k) Accidents or incidents resulting in human injury and/or property damage are to be reported immediately to the CO or his/her representative. Notification, recording, and reporting requirements for accidents and/or incidents shall be conducted in accordance with 29 CFR 1904 and 1910. The CO or his/her representative shall be provided with copies of all OSHA-required documentation within 10 days of the accident and/or incident.
- (l) The Contractor shall maintain an accurate record of on-site hours worked and shall provide this information to the CO or his/her representative upon request.
- (m) The Contractor shall collect metrics on environment, safety, and health performance as determined by NETL in addition to those contained in their ISM Plan [NOTE: indicators will change with time. The following indicators are examples of those recently incorporated in site-support contracts]: Recordable Injury/Illness Rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked); Lost Work Day Case Rate (total number of OSHA-defined lost work day cases/total hours worked); Occupational safety and health cost index (approximate amount of dollars lost [indirect and direct] per 100 hours worked for all injuries/illnesses), and Hazardous Waste Generated (total cubic feet of hazardous waste shipped).
- (n) The Contractor shall abide by the requirements of NETL Procedure 541.2-1A, Affirmative Procurement Program (current version) that establishes "Green Procurement".
- (o) NETL depends on volunteers to staff its emergency response organization (ERO), including the hazmat/rescue team. The Contractor shall allow participation of employees in NETL's site-wide emergency response program. The degree and quality of participation may be used as a performance metric. Participants shall be allowed the time necessary to fulfill ERO training obligations. The Contractor whose employees participate in emergency response functions shall be responsible for providing any additional liability insurance or supplemental insurance deemed appropriate by the Contractor for the ERO positions that their employees occupy.

#### **H.34 QUALITY ASSURANCE/QUALITY CONTROL (JUNE 1998)**

The Contractor shall implement the DOE work using Quality Assurance/Quality Control measures as appropriate to:

- (a) Achieve accuracy, precision, and reproducibility of data adequate to fulfill the objectives of the work to be performed under this award;
- (b) Control experimental operations using accepted technical standards, instruction, and other appropriate means commensurate with the complexity and the risk of the work;
- (c) Identify, control and maintain components, equipment, facilities, hardware and materials;
- (d) Control handling, storage, and shipping. Cleaning and preservation to prevent damage, loss or deterioration;
- (e) Control calibration, maintenance, accountability, and use of measuring and testing equipment used for monitoring and data collection;
- (f) Ensure that designs use sound engineering/scientific principles and appropriate standards and demonstrate that equipment and processes performed as intended;
- (g) Ensure that purchased items and services meet established specifications and requirements;
- (h) Incorporate inspections as appropriate;
- (i) Continually improve the quality of the work done for DOE through the improvement of work practices guided by internal performance assessment.

**H.35 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION (JAN 1999)**

- (a) The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local law as, including codes, ordinances and regulations, covering safety, health and environmental protection.
- (b) The Contractor agrees to include paragraph (a) of this clause in first-tier subcontracts and agrees to enforce the terms of this clause.

**H.36 HAZARDOUS WASTES MANIFESTS AND LABELS (MAR 2003)**

The Contractor shall not identify, on wastes manifests or container labels or otherwise, DOE or NETL as the owner or generator of hazardous wastes without written permission, signed by either NETL's Director or both NETL's Contracting Officer and NETL's ES&H Division Director, unless expressly and specifically permitted by the contract.

**H.37 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2002) (JAN 2002)**

The Contractor agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

A copy of the DOE "Lobbying Brochure" which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal Contractors can be found at

<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Lobbying+Brochure?OpenDocument>

**H.38 INCORPORATION OF PORTIONS OF CONTRACTOR'S PROPOSAL**

In its proposal, the Contractor offered to the Government various capabilities and monetary inducements that were considered to add value to NETL's operations. These offered capabilities and inducements were of significant importance to NETL and were identified as strengths in the evaluation process. Therefore, the Government has elected to incorporate these value-adding offers, as proposed, into this contract in Attachment H.

## SECTION I - CONTRACT CLAUSES

### **I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations (Clauses starting with 52): <http://www.arnet.gov/far/index.html>  
Department of Energy Regulations (Clauses starting with 952): <http://www.professionals.doe.gov>

### **I.2 52.202-1 DEFINITIONS. (DEC 2001)**

(a) "Agency head" or "head of the agency" means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) "Commercial component" means any component that is a commercial item.

(c) "Commercial item" means -

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for -

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if--

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2),

(3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) "Nondevelopmental item" means -

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract



**I.3 952.202-1 DEFINITIONS.**

(a) As prescribed in 902 200, insert the clause at FAR 52 202-1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

(a) Head of Agency means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraph (h) except it will be designated paragraph (g) if Alternate I of the FAR clause is used.

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

**I.4 52.203-3 GRATUITIES. (APR 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -

(1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled -

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

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

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

**I.5 52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)**

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

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

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

Government contract or contracts through improper influence.

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

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

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

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

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

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

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

*(a) Definitions.*

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

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

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

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

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

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

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

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

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

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

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

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

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

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

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

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

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may -

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which -

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either -

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a

Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**I.9 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be -

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts -

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may -

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the

procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**I.10 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (JUN 2003)**

*(a) Definitions.*

“Agency,” as used in this clause, means executive agency as defined in 2.101.

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

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

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

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

“Local government,” as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

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

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

“Person,” as used in this clause, means an individual, corporation, company, association, authority, firm,

partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

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

“Regularly employed,” as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions*. (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees*. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any

time where they are not related to a specific solicitation for any covered Federal action:

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

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

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

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

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

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

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

(ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

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

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

with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.* (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall



be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**I.11 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000)**

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

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

**I.12 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER. (AUG 2000)**

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

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as -

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

"Recovered material," for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as -

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

### **I.13 952.204-7 CENTRAL CONTRACTOR REGISTRATION (OCT 2003)**

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

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

Registered in the CCR database means that--

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields and has marked the record "Active".

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number--

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and Zip Code.

(iv) Company Mailing Address, City, State and Zip Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)(1)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12 of the FAR; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this

contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

#### **I.14 952.208-70 PRINTING. (APR 1984)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

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

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

#### **I.15 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)**

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**I.16 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUN 1997)**

(a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product. (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of 2 years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information. (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:

(A) use such information for any private purpose unless the information has

been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award. (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

#### **I.17 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (JUN 1999)**

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or

anticipated to be incurred directly or indirectly in performance of 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.

(c) *Cost or pricing data*. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to -

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General* - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and 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.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), 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 Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and -

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

**I.18 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (JUN 1999) - ALTERNATE II (APR 1998)  
FOR EDUCATIONALS AND NONPROFITS**

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of 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.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to -

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General* - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and 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.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter



period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), 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 Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and -

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

**I.19 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications)

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

**I.20 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA. (OCT 1997)**

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because -

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if -

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid -

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of

overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

**I.21 52.215-12 SUBCONTRACTOR COST OR PRICING DATA. (OCT 1997)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either -

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data - Modifications.

**I.22 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS. (DEC 1998)**

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

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

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

**I.23 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY. (OCT 1997)**

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

**I.24 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. (OCT 1997)**

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

**I.25 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES. (OCT 1997)**

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall -

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

**I.26 52.216-19 ORDER LIMITATIONS. (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor -

(1) Any order for a single item in excess of \$50,000,000;

(2) Any order for a combination of items in excess of \$75,000,000; or

(3) A series of orders from the same ordering office within 10 days that together call for quantities

exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 10 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

**I.27 52.216-22 INDEFINITE QUANTITY. (OCT 1995)**

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after completion of the contract.

**I.28 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)**

(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, 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 "contracting

officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204-73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

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

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information 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 or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

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

(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 DOE's rights, including its rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

#### **1.29 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (OCT 2000)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United

States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract -

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern” -

(1) Means a small business concern -

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that -

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

“Veteran-owned small business concern” means a small business concern -

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern -

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

**I.30 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN. (OCT 2001) - ALTERNATE II (OCT 2001)**

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

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

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

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

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

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

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

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

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

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.



(2) A statement of -

- (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
- (ii) Total dollars planned to be subcontracted to small business concerns;
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to -

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, Service-disabled veteran-owned small business concerns; HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with -

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will -

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating -

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) 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;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through -

(A) Workshops, seminars, training, etc ; and

(B) Monitoring performance to evaluate compliance with the program's requirements

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small

business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided -

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with -

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) *Standard Form 294, Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) *Standard Form 295, Summary Subcontract Report*. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

**I.31 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN. (JAN 1999)**

(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

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

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

**I.32 952.219-70 DOE MENTOR-PROTEGE PROGRAM. (MAY 2000)**

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protege

firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

**I.33 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)**

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

**I.34 52.222-3 CONVICT LABOR. (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

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

**I.35 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (SEP 2000)**

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation, liability for unpaid wages, liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In

addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

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

**I.36 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999)**

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**I.37 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION. (FEB 1999)**

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward

compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

**I.38 52.222-26 EQUAL OPPORTUNITY. (APR 2002)**

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to -

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.



(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**I.39 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (DEC 2001)**

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

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

Executive and top management means any employee--

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

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

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means--

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--
  - (i) Rated at 30 percent or more; or
  - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who--

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred--
  - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of

the active duty was performed--

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

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

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(iii) Rate of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by the Contractor including social or recreational programs;  
and

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings. (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning

nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) **Applicability.** This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) **Postings.** (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

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

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

(g) **Subcontracts.** The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

**L.40 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (JUN 1998)**

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as -

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating -

- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
- (ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

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

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor

shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

**I.41 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (DEC 2001)**

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS100, entitled "Federal Contractor Veterans' Employment Report (VETS100 Report)".

(c) The Contractor shall submit VETS100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that-

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**I.42 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED. (MAY 1989)**

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41

U.S.C. 351, *et seq.*)

“Contractor,” as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“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.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

(c) *Compensation.* (1) 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 wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System

and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If 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 under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *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 person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe



benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been 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 limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, 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. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or 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, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *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, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act -

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly

compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime 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 Government Prime Contractor shall report such fact to the Contracting Officer, 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.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, 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:

(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 Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and 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, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act 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 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is

not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips*. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision -

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards*. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **I.43 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES. (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:*

*It is not a Wage Determination*

Employee Class	Monetary Wage - Fringe Benefits
[ ]	[ ]

#### **I.44 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS). (MAY 1989)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, *et seq.*), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$ .40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

**I.45 52.222-47 SCA MINIMUM WAGES AND FRINGE BENEFITS APPLICABLE TO SUCCESSOR CONTRACT PURSUANT TO PREDECESSOR CONTRACTOR COLLECTIVE BARGAINING AGREEMENTS (CBA). (MAY 1989)**

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor [ ] and the [ ] (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic

terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

**I.46 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (AUG 2003)**

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

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

- (1) The emergency planning reporting requirements of section 302 of EPCRA.
- (2) The emergency notice requirements of section 304 of EPCRA.
- (3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.
- (4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
- (5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.
- (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.

**I.47 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)**

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

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government

contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration -

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about -

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs;  
and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

**I.48 52.223-10 WASTE REDUCTION PROGRAM. (AUG 2000)**

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

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

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

**I.49 52.223-14 TOXIC CHEMICAL RELEASE REPORTING. (AUG 2003)**

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:



(i) Major group code 10 (except 1011, 1081, and 1094).

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt -

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall -

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall -

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**I.50 952.224-70 PAPERWORK REDUCTION ACT. (APR 1984)**

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes

beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

**I.51 52.225-3 BUY AMERICAN ACT - NORTH AMERICAN FREE TRADE AGREEMENT - ISRAELI TRADE ACT. (JUN 2003)**

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

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means -

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

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

"Israeli end product" means an article that -

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country end product" means an article that -

(1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was

transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a-10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), and the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note) by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

(d) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act - North American Free Trade Agreement - Israeli Trade Act - Certificate." If the Contractor specified in its offer that the Contractor would supply a NAFTA country end product or an Israeli end product, then the Contractor shall supply a NAFTA country end product, an Israeli end product or, at the Contractor's option, a domestic end product.

**I.52 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JUN 2003)**

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

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**I.53 95.226-71 UTILIZATION OF ENERGY POLICY ACT TARGET ENTITIES. (JUN 1996)**

(a) Definition. - Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600 4(a) and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

**I.54 952.226-72 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS. (JUN 1996)**

(a) Definition - Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Goals. The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: [\* \* \*] percent;

(2) Historically Black colleges and universities: [\* \* \*] percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: [\* \* \*] percent.

\* \* \* These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.

(c) Reporting requirements (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the contracting officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form

(SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

**I.55 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE. (JUN 1997)**

**(a) Definition.**

Eligible employee means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.

(b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.

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

**I.56 52.227-1 AUTHORIZATION AND CONSENT. (JUL 1995)**

(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 Contracting Officer 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 or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**I.57 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (AUG 1996)**

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

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

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

**I.58 52.227-3 PATENT INDEMNITY. (APR 1984)**

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to -

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**I.59 52.227-6 ROYALTY INFORMATION. (APR 1984)**

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit

(6) Unit price of contract item.

(7) Number of units.

(8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

**I.60**      **952.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM). (FEB**  
**1995)**

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor. (1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical,

biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. (2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period. (3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention -

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times. (2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country. (3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file. (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or



modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest. (1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention. (2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars. (3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office. (4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts. (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions. (2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952 227-13. (3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the

United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that - (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that - (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor; (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10; (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

#### (l) Communications

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer. (2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978. (3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) a report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

**I.61 952.227-13 PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT. (SEP 1997)**

**(a) Definitions.**

"Invention", as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application", as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention", as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109-6 or successor regulations. See 10 CFR part 784.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

**(b) Allocations of principal rights.**

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause. (2) Greater rights determinations. (i) The contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file

and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government. (1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that - (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor. (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains. (2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. (3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license. (4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of

the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports. (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records

as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause. (5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and

papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual

reduction to practice of inventions in the same field of technology as the work under this contract to determine whether -

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures. (2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (NOTE: This paragraph does not apply to subcontracts). (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to -

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause;  
or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause. (2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause. (3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably



modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor -

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer. (3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause. (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded. (5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) Background Patents.

(1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract. (2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only. (3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter. 1) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) Forfeiture of rights in unreported subject inventions.

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later. (2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence. (3) Pending written assignment of the patent application and patents on a

subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

**I.62 52.227-16 ADDITIONAL DATA REQUIREMENTS. (JUN 1987)**

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data - General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data - General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data - General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

**I.63 52.227-17 RIGHTS IN DATA - SPECIAL WORKS. (JUN 1987)**

**(a) Definitions.**

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

**(b) Allocation of Rights. (1) The Government shall have -**

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

*(c) Copyright - (1) Data first produced in the performance of this contract.* (i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

*(2) Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

*(d) Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

*(e) Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

#### **I.64 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL). (JUN 1987)**

Except for data contained on pages none, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated April 13, 2004, upon which this contract is based.

#### **I.65 52.230-2 COST ACCOUNTING STANDARDS. (APR 1998)**

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

(1) *(CAS-covered Contracts Only)* By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5,

including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

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

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

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

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

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make

copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

**I.66 52.230-5 COST ACCOUNTING STANDARDS - EDUCATIONAL INSTITUTION. (APR 1998)**

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

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

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, 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 9905 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 Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made

under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

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

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

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

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

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

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

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903 201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

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

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

#### **I.67 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS. (NOV 1999)**

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

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (*i.e.*, firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to

CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (*i.e.*, Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

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

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

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

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

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

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

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

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

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards - Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost



Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

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

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

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5 -

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

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

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

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

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

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

**I.68 52.232-17 INTEREST. (JUN 1996)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.69 52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

**I.70 52.232-25 PROMPT PAYMENT. (FEB 2002) -- ALTERNATE I (FEB 2002)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper

invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) Overpayments. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(e) Invoices for interim payments. For interim payments under this cost-reimbursement contract for services--

(1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;

(2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and

(3) The contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

**I.71 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION. (MAY 1999)**

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either -

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for -

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and -

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the CCR database and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent. <P>

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance

address contained in the CCR database.

**I.72 52.233-1 DISPUTES. (JUL 2002) - ALTERNATE I (DEC 1991)**

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

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as



provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**I.73 52.233-3 PROTEST AFTER AWARD. (AUG 1996) - ALTERNATE I (JUN 1985)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected and the contract shall be modified, in writing, accordingly, if -

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

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

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

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

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I.74 952.235-70 KEY PERSONNEL. (APR 1994)**

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the contracting officer; Provided, that the contracting officer may ratify in writing such diversion and such ratification shall constitute the consent of the contracting officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

**I.75 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**I.76 52.237-3 CONTINUITY OF SERVICES. (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to -

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**I.77 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME. (OCT 1997)**

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

"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for

purposes of computing uncompensated overtime hours.

“Uncompensated overtime rate” is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ( $\$20.00 \times 40$  divided by  $45 = \$17.78$ ).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

**I.78 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984)**

(a) Notwithstanding any other clause of this contract -

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

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

**I.79 52.242-13 BANKRUPTCY. (JUL 1995)**

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

**I.80 52.244-2 SUBCONTRACTS. (AUG 1998) - ALTERNATE II (AUG 1998)**

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

“Approved purchasing system” means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that -

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds -

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

Subcontracts with a value in excess of \$50,000.

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract

(vii) A negotiation memorandum reflecting -

- (A) The principal elements of the subcontract price negotiations;
- (B) The most significant considerations controlling establishment of initial or revised prices;
- (C) The reason cost or pricing data were or were not required;
- (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
- (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
- (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15 404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated

during negotiations:

Carnegie Mellon University  
WVU Research Corporation  
University of Pittsburgh  
ICF Consulting  
Energetics  
Augusta Systems  
Fluent  
Leonardo Technologies

**I.81 52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)**

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

**I.82 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (APR 2003)**

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

“Commercial item” has the meaning contained in the clause at 52.202-1, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)(1) The following clauses shall be flowed down to subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**I.83 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

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

**I.84 52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that -

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

**I.85 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS. (JUN 2003)**

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

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

#### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

(End of statement)

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

#### **I.86 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS.** **(APR 2003)**

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.



(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both -

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference  
Maritime Administration (MAR-590)  
400 Seventh Street, SW  
Washington DC 20590.

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

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).

(e) The requirement in paragraph (a) does not apply to -

- (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
- (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
- (4) Subcontracts or purchase orders for the acquisition of commercial items unless--

(i) This contract is--

(A) A contract or agreement for ocean transportation services; or

(B) A construction contract; or

(ii) The supplies being transported are--

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military--

(1) Contingency operations;

(2) Exercises; or

(3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates  
Maritime Administration  
400 Seventh Street, SW  
Washington DC 20590

Phone: (202) 366-4610.

**I.87 952.247-70 FOREIGN TRAVEL. (DEC 2000)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1, Official Foreign Travel, or any subsequent version of the order in effect at the time of award.

**I.88 952.247-70 FOREIGN TRAVEL (MARCH 2000)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in DOE Order 551.1A, Official Foreign Travel, or any subsequent version of this order in effect at the time of award.

**I.89 52.251-1 GOVERNMENT SUPPLY SOURCES. (APR 1984)**

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

**I.90 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

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

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

**IN ADDITION TO CLAUSES I.1 – I.107 FOR ALL TYPES OF TASK ORDERS, THE FOLLOWING CLAUSES ARE TO BE INCLUDED IN COST-REIMBURSEMENT TYPE TASK ORDERS ISSUED UNDER THE CONTRACT.**

**I.91 52.216-7 ALLOWABLE COST AND PAYMENT. (DEC 2002)**

(a) *Invoicing.* (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30<sup>th</sup>"] day after the designated billing office receives a proper payment request.

In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only -

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made -

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless -

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates -

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be -

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver -

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except -

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

#### **I.92 952.216-7 ALLOWABLE COST AND PAYMENT**

##### **Alternate I**

If the contract is with a nonprofit organization, other than an educational institution; or a State or local government, modify the clause at FAR 52.216-7 Allowable Cost and Payment by deleting from paragraph (a) the phrase "Subpart 31.2" and substituting for it "Subpart 31.7."

##### **Alternate II**

When contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216-7 by adding the phrase "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after the acronym "(FAR)".

#### **I.93 52.216-8 FIXED FEE. (MAR 1997)**

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

#### **I.94 52.222-2 PAYMENT FOR OVERTIME PREMIUMS. (JUL 1990)**

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed [[ ]] or the overtime premium is paid for work -

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall -

(1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

[ ] Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (a)(1) through (a)(4) of the clause.

**I.95 52.228-7 INSURANCE - LIABILITY TO THIRD PERSONS. (MAR 1996)**

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed -

(1) For that portion -

(i) Of the reasonable cost of insurance allocable to this contract; and

(ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of



cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for -

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor);  
or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) -

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of -

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall -

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

**I.96 52.232-20 LIMITATION OF COST. (APR 1984)**

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that -

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

**I.97 52.232-22 LIMITATION OF FUNDS. (APR 1984)**

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated

cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause -

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of -

(i) The amount then allotted to the contract by the Government or;

(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this

contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of -

(1) The amount previously allotted by the Government or;

(2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

**I.98 52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (MAY 2001)**

(a) *Definition.* "Proposal," as used in this clause, means either -

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which -

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to -

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed -

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in

excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

**I.99 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS. (JAN 1997)**

(a) The Contractor shall -

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

**Certificate of Final Indirect Costs**

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**I.100 52.243-2 CHANGES - COST-REIMBURSEMENT. (AUG 1987) - ALTERNATE I (APR 1984)**

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

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

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the -

- (1) Estimated cost, delivery or completion schedule, or both;
- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the contract accordingly.

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

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

**I.101 52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS). (JUN 2003)**

(a) *Government-furnished property.*

(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of -

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms

of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer 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 Government-furnished property* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any -

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

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

(c) *Title* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon -

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-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.

(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 Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

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

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

(f) *Access.* The Government and all its 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.

(g) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage) -

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.



(3)(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage -

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontractor, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of -

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the

Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for -

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which 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 Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. 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 Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) *Abandonment and restoration of Contractor premises.* Unless otherwise provided herein, the Government -

(1) May abandon any Government property in place, at which time all obligations of the Government 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 contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) 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 the United States and its outlying areas the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**I.102 52.245-5 GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIALS, OR LABOR-HOUR CONTRACTS.)**

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

**I.103 52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS). (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer 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 Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including -

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

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

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principle shall apply; *provided*, that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

**L.104 52.249-6 TERMINATION (COST-REIMBURSEMENT). (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if -

- (1) The Contracting Officer determines that a termination is in the Government's interest; or
- (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government -
  - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;
  - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
  - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including -

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such

settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor -

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**I.105 52.249-14 EXCUSABLE DELAYS. (APR 1984)**

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

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.



**IN ADDITION TO CLAUSES I.1 – I.107 FOR ALL TYPES OF TASK ORDERS, THE FOLLOWING CLAUSES ARE TO BE INCLUDED IN FIRM FIXED PRICE TYPE TASK ORDERS ISSUED UNDER THE CONTRACT.**

**I.106 52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective -

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

**I.107 52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (APR 2003)**

(a) As used in this clause--

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

**I.108 52.232-1 PAYMENTS. (APR 1984)**

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if -

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

**I.109 52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (FEB 2002)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**I.110 52.232-11 EXTRAS. (APR 1984)**

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

**I.111 52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE I (APR 1984)**

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

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

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

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

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

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**I.112 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS). (JUN 2003)**

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications 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 "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-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 Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer 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 Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any -

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

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

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-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. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not 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.

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

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

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

(B) Commencement of processing of the material or its use in contract performance; or

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

(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 Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(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 Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or

repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

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

(f) *Access.* The Government and all its 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.

(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.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for -

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which 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 Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. 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 Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) *Abandonment and restoration of Contractor's premises.* Unless otherwise provided herein, the Government -

- (1) May abandon any Government property in place, at which time all obligations of the Government 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 Government-furnished property (listed in the Schedule or specifications) 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 and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**I.113 952.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)**

Modify FAR 52.245-2 by adding "and the DOE Acquisition Regulation Subpart 945.5," after the reference to FAR Subpart 45.5 in the first sentence of paragraphs (e)(1) and (e)(2) of the clause.

**I.114 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM). (APR 1984)**

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.115 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer 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 Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) 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 the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government -

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; 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 the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the

protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining 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 (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

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

(2) The total of -

(i) The costs incurred in the performance of the work terminated, including initial costs

and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(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 (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, 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 Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) 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.

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

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer 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 Contracting Officer.



(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) 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 the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**I.116 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE). (APR 1984)**

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).

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

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

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

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

**SECTION J - LIST OF ATTACHMENTS**

**J.1 LIST OF ATTACHMENTS/EXHIBITS (MAR 1999)**

<b>ATTACHMENT</b>	<b>DESCRIPTION</b>
A	Statement of Work
B	Reporting Requirements
B-1	Cost Management/Invoice Detail/Summary Staffing Report Forms
B-2	Contract Organization Chart
C	Performance Evaluation Plan
D	Position Qualifications
E	Wage Determinations/Collective Bargaining Agreements
F	Incorporated Small Business Subcontracting Plan
G	Performance Guarantee Agreement
H	Incorporated Portions of Contractor's Proposal

**J2 ATTACHMENT A – STATEMENT OF WORK**

**RESEARCH AND DEVELOPMENT SUPPORT (RDS) SERVICES  
FOR THE NATIONAL ENERGY TECHNOLOGY LABORATORY (NETL)**

The goal of this procurement is to provide RDS Services for the NETL. The following format has been used for this Statement of Work (SOW):

- 1.0 Background
- 2.0 Scope
- 3.0 Applicable Documents
- 4.0 Technical Service Areas/Management Performance
- 5.0 Performance Requirements Summary
- 6.0 Notes/Guidance
- 7.0 Glossary

**1.0 BACKGROUND**

**1.1 General**

National Energy Technology Laboratory (NETL) is owned and operated by the U.S. Department of Energy (DOE). NETL implements research, development and demonstration (R&D) programs to advance energy and energy-related environmental technology. The DOE Assistant Secretary for Fossil Energy is NETL's Lead Program Secretarial Officer. Currently, the greatest portion of funding to NETL comes from DOE's Office of Fossil Energy; the remainder comes from other DOE programs (e.g., the Office of Energy Efficiency and Renewable Energy and other Federal agencies). Figures 1 and 2 provide recent NETL budget information.

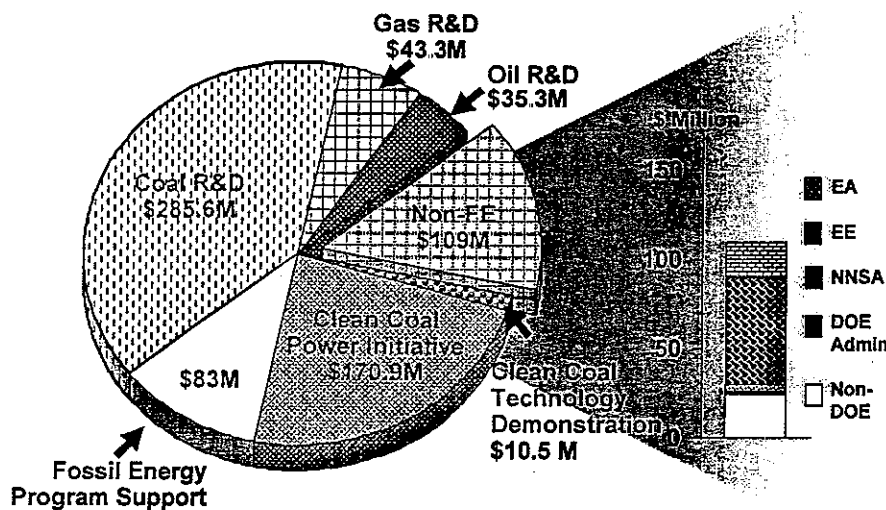


Figure 1. NETL's FY2004 budget distribution

NETL conducts R&D activities both on-site through its in-house research organization and off-site through financial assistance agreements (i.e., grants and cooperative agreements) and contractual arrangements. The nearly 1,300 R&D projects in NETL's portfolio are conducted in partnership with industry, universities, other national and

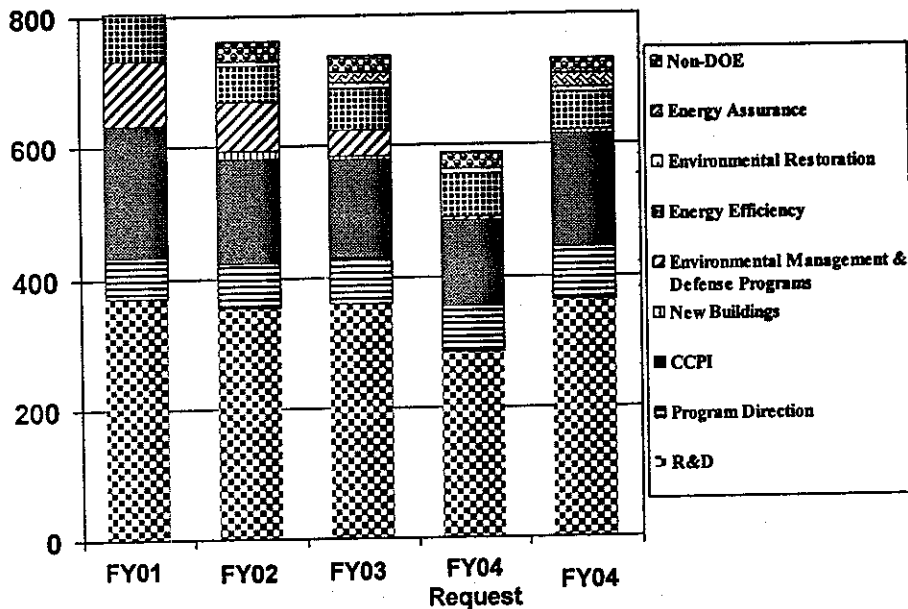


Figure 2. NETL budget history (M\$)

Federal laboratories, private research organizations, and other Federal and state agencies. The hallmark of NETL is the ability to assemble industrial, academic, and Governmental resources to create know-how and technology to address energy issues.

NETL Federal employees conduct various functions; specifically they perform in-house R&D activities, implement contracted R&D efforts, perform analysis to support policy development, and establish partnerships through licensing and Cooperative Research and Development Agreement (CRADA) activities. NETL has the authorities of a DOE operations office integrated with the implementing functions typically conducted by DOE Management and Operation (M&O) Contractors. About 550 Federal employees work on-site at NETL. The staff also includes over 550 Contractor employees who support NETL's activities.

Over one half of NETL's R&D activities are carried out by industry. This emphasis on partnering with the business community is essential to NETL's mission. To be successful, the advanced technologies emerging from NETL's research programs must be commercialized. Private-sector involvement brings about a better understanding of end-user needs and helps assure that the new technologies will gain rapid acceptance in the marketplace. Therefore, collaboration and cost-sharing with the private sector throughout the R&D process provides an intrinsic technology transfer mechanism that accelerates the deployment of new technologies. In addition, the researchers at NETL apply advancements in science to develop new technologies to address emerging issues.

## 1.2 Mission and Vision

NETL's primary mission is conducting and implementing science and technology programs to resolve the environmental, supply, and reliability constraints of producing and using fossil resources. This work is segmented according to coal, oil, and gas programs. Additional information on NETL's R&D programs can be found at [www.netl.doe.gov](http://www.netl.doe.gov).

NETL's vision is to be the preferred provider of energy technology and policy options that benefit the public. To do this the laboratory will strive to:

- Accelerate the advancement of energy science and technology by strengthening its existing workforce, attracting new, high-level researchers, and establishing state-of-the-art facilities.

- Create a research environment that fosters multi-disciplinary collaboration, creativity, and innovations to enable NETL to bring about major improvements in the cost, environmental performance, and reliability of energy services.
- Address energy and environmental issues through partnerships with research institutions, the private sector, and Government agencies.
- Promote economic development by supporting the commercialization of technology and developing strong collaborations with academic institutions, other laboratories, and businesses.
- Utilize effective management practices that best transfer advancements in science and technology into viable energy and environmental options that can be deployed by energy and related industries and that benefit the public.

### 1.3 NETL Program and Technical Support Areas

#### 1.3.1 Technology Sectors

Overall, NETL's activities to advance energy and energy-related environmental technology are organized by Technology Sectors. NETL's Technology Sectors to be supported by the Contractor shall include, but not be limited to, the following:

- *Coal and Power Systems* – conducts R&D, as well as studies to support policy development, in the areas of advanced combustion technologies, gasification technologies, carbon sequestration, environmental control technologies, fuel cells, turbines, and hybrid technologies.
- *Natural Gas Technology* - conducts R&D, as well as studies to support policy development, in the areas of natural gas exploration, production, transmission, and storage.
- *Petroleum Technology* – conducts R&D, as well as studies to support policy development, to improve the efficiency and environmental quality of domestic oil operations.
- *Energy Policy Support* – conducts analytical studies to support the development of sound energy policy.
- *DOE Office of Energy Assurance* – conducts R&D and analyses to examine and maintain the integrity of the energy infrastructure (e.g., electricity production, processing, transport, storage and utilization). Within the energy assurance arena, supports analyses of critical energy assets, energy sector emergencies, technology development and application, as well as training activities at the Energy Infrastructure Training and Analysis Center (EITAC).
- *DOE Office of Energy Efficiency/Renewable Energy (EERE)* - provides as requested quality solutions in EERE program lines (e.g., distributed energy, Freedom Car, building technologies, weatherization initiatives, Federal energy management program, mining industrial technology programs, biomass activities to include black liquor activities, hydrogen and fuel cell initiatives).
- *Other Energy Initiatives* – supports national-level, advanced initiatives as requested from other DOE Offices (e.g., National Nuclear Security Administration, Engineering and Construction Management and Legacy Management) and non-DOE activities including Homeland Security (e.g., critical infrastructure interdependencies; technology transfer; data/product sharing; all-hazards emergency response; non-proliferation of hazardous nuclear material).

#### 1.3.2 In-House R&D Focus Areas

From among the various Technology Sectors discussed above, NETL's in-house R&D activities are organized into "Focus Areas." Focus Areas to be supported by the Contractor shall include, but not be limited to, the following:

- *Carbon Sequestration Science* – provides long-range options through research and field testing for sequestering carbon dioxide by geologic, ocean, and terrestrial methods.
- *Advanced Fuel Systems* – conducts research to advance conversion and separation processes, including performing work in hydrogen production, separation, and storage technologies; natural gas hydrates; catalyst and membrane development; and natural gas-to-liquids conversion.

- *Computational Energy Science* – develops computational models and mathematical simulations, including visualization techniques, to examine the behavior of engineered systems at various scales (ranging from the microscopic- to the complex system-scale).
- *Advanced Power Systems* – addresses emissions from advanced, coal-fired power systems by conducting R&D on the efficient separation and/or removal of selective species from the exhaust stream (e.g., the removal of sulfur species, small particles, or hydrogen from gas streams).
- *Environmental Research* – conducts research to minimize or abate environmental problems associated with the mining and use of fossil fuels in such areas as air pollution from conventional combustion processes (e.g., mercury emissions from coal-fired power plants), watershed analysis (e.g., characterization and abatement of acid mine drainage from shuttered coal mines), and by-product utilization (e.g., use of fly-ash resulting from coal-fired combustion processes).
- *Energy System Dynamics* – investigates the fundamental mechanisms of combustion and conversion under dynamic conditions to enhance the efficiency, flexibility, and reliability of fossil-based gas or liquid fueled technologies, such as turbines and fuel cells.

## 2.0 SCOPE

### 2.1 Framework

The Contractor shall have a sufficient level of expertise to successfully support the management and integration of all stages of science and technology development leading to commercially viable solutions.

Through this contract (solicitation), NETL seeks to access a highly capable, yet flexible, R&D support organization that can assist NETL in conducting its mission and achieving its vision.

### 2.2 Core Work and Variable Work

Under this contract the Contractor shall conduct both “core work” and “variable work.” Core work is defined as predictable, schedulable, and recurring work of a longer duration (typically 1 year or more) that supports NETL’s Federal activities and is typically conducted on-site.

“Variable work” is defined as shorter term activities conducted on an as-needed basis generally by off-site contractors at off-site locations. The Contractor shall provide off-site resources (typically through the variable work provision of this contract) that would augment core on-site R&D Contractor capabilities. The ability to draw on external resources provides NETL the ability to assemble a virtual capability on a project-specific basis. Some of these off-site resources (e.g., expertise and facilities) should be considered world-class or state-of-the-art. In addition, variable work could include performing work within the scope of the RDS SOW for other Federal agencies which come to NETL through Interagency Agreements.

### 2.3 Types of Services

In support of NETL’s R&D mission, the Contractor shall provide service to the Government by:

- Effectively conducting research, development, demonstration, and deployment operations, primarily on-site and, on request, off NETL sites.
- Marshalling high-quality off-site resources (e.g., facilities, equipment, and technical staff) to address expert and/or unique scientific or technological requirements that complement NETL on-site resources.
- Providing technical and economic analyses to assist decisions regarding investments in the R&D project portfolio, as well as formulating technology development and deployment strategies.
- Establishing partnerships with top-tier universities, other research institutions, the business community, and Government organizations to help the Government define issues, advance NETL scientific and technological capabilities, and foster the dissemination of knowledge and technology.
- Enhancing the on-site, state-of-the-art capability with respect to equipment, facilities, and research staff (including scientists, engineers, and technical analysts).

- Supporting Federal efforts to identify and develop new R&D program areas to advance energy technologies in both traditional and non-traditional Fossil Energy mission areas.
- Supporting NETL's pursuit of funding opportunities from other Government or private-sector organizations by providing applicable knowledge, skills, abilities, and resources.
- Establishing and operating graduate and undergraduate student internship, postdoctoral and senior research fellowship, faculty and senior research exchange, summer research participation, and other educational outreach programs to attract top-level researchers and students to NETL sites.
- Engaging the private sector to effect the commercialization and transfer of technology and promote regional business development.
- Providing cross-cutting and integrated environmental, safety, and health (ES&H) services at NETL sites (Morgantown, WV; Pittsburgh, PA; Tulsa, OK; and Fairbanks, AK), as well as upon request to the Albany Research Center located in Albany, OR. This ES&H support will be completely integrated with NETL's Federal ES&H programs and will provide matrixed support (through NETL Federal staff) to other on-site support Contractors. In particular, the Contractor will support DOE initiatives such as integrated safety management, certified environmental management systems, and associated continuous improvement activities.

## **2.4 General Characteristics of Work to Be Performed**

The RDS services contract will be defined primarily (but not solely) by the following characteristics:

- Provide support to the entire NETL professional workforce, including R&D, systems, project, and technology managers.
- Utilize both on-site and off-site Contractor personnel to accomplish work.
- Conduct complex tasks that support multiple technical service areas listed in the SOW. These tasks are anticipated to require integration and synthesis of information and workflow. The desired result of these cross-cutting and integrated efforts is efficient and effective "life-cycle" management of R&D approaches and initiatives.
- Consist of predictable, longer-term tasks (under core work) with generally defined end objectives, but composed of smaller, serial subtasks (with more defined objectives) in which the results and deliverables of previous subtasks affect the design, deliverables, and specific objectives of subsequent subtasks.
- Provides for shorter-term tasks (under variable work) requiring unique and/or specialized resources and facilities to address specific technology barrier issues.
- Ensure that NETL has access to a diversity of top-level scientists and engineers with expertise appropriate to the laboratory's mission.

## **2.5 Resources**

### **2.5.1 Contractor-Furnished Resources**

The Contractor shall provide all personnel, facilities, equipment, materials, and supplies required to execute the work under this contract, except for that specifically identified as being provided by the Government in Section 2.5.2 of this SOW.

### **2.5.2 Government-Furnished Resources**

See Provision H.4, Government Property and Data (SEP 2003).

See Provision H.27, Government Provided Services (June 2003).

## **2.6 Location of Performance**

The primary locations for the performance of the work under this contract shall be at NETL sites in Morgantown, WV and Pittsburgh, PA. At NETL's request, work may also be performed at NETL's Tulsa, OK and Fairbanks, AK sites. Accomplishment of the work under this contract shall require some travel on the part of Contractor employees



among NETL sites, and between NETL sites and other locations.

### **3.0 APPLICABLE DOCUMENTS**

The following documents will be available for the solicitation phase only and are posted on the Site Support Contractor Reading room at the following internet site: [www.netl.doe.gov/business/solicit/ssc2003/index.html](http://www.netl.doe.gov/business/solicit/ssc2003/index.html).

List of Current Contractor-Operated Experimental Test Facilities (Posted under Section 2.0 Referenced Documents in the SOW).

List of Current Contractor-Operated Analytical Equipment (Posted under Section 2.0 Referenced Documents in the SOW).

Sample ES&H Task (Posted under Section 6.0 Sample Task Order).

### **4.0 TECHNICAL SERVICE AREAS/MANAGEMENT PERFORMANCE**

The work to be accomplished by the Contractor under this contract is divided into Technical Service Areas depicted in Sections 4.1 through 4.7, and management performance activities as depicted in Section 4.8.

#### **4.1 Technical Service Area - Partnership Development**

The Contractor shall assist NETL Federal staff, in both in-house and extramural research, in the conceptualization and conduct of activities associated with developing, expanding, or pursuing new, R&D program areas. These efforts shall include, but not be limited to:

- a. Marshalling top-flight off-site resources (e.g., facilities, equipment, and technical staff) to address expert and/or unique scientific or technological requirements that complement NETL resources.
- b. Working closely with the private sector and other partners to foster the dissemination of knowledge, affect the transfer and commercialization of technology, and promote regional business development.
- c. Establishing and operating graduate and undergraduate student internship, postdoctoral and senior research fellowship, faculty and senior research exchange, summer research participation, and other educational outreach programs to attract top-level researchers and students to NETL sites.

#### **4.2 Technical Service Area - R&D Technology Planning and Analysis**

The Contractor shall assist Federal staff in technology planning, analysis, and evaluation efforts that will enable NETL:

- a. to determine optimum R&D portfolios with respect to meeting long-term national and global needs, Presidential initiatives, Departmental goals, and program strategies while complementing the capabilities and efforts of other research institutions and the private sector and
- b. to support the budget planning process and the measurement of progress against performance targets, e.g., Government Performance Result Act (GPRA) requirements, Joule milestones, and Office of Management and Budget (OMB) R&D criteria.

These efforts shall include, but not be limited to:

- a. Providing expert analyses of complex energy issues that examine technological, societal, environmental, and economic factors to support policy development and strategic planning.
- b. Conducting assessments of world-wide scientific and technological progress towards specific energy issues, legislative requirements, and Departmental goals, and developing options for additional R&D to resolve remaining gaps and complement ongoing programs.
- c. Assessing the progress of R&D programs through targeted studies and independent review boards and recommending actions to optimize technical, management, cost, and schedule performance.

#### 4.3 Technical Service Area - R&D Project Planning and Analysis

The Contractor shall support the Federal project planning and assessment in both in-house and extramural research. These efforts shall include, but not be limited to:

- a. Developing market-based product requirements and specifications for technologies and assessing project performance in meeting these requirements and specifications.
- b. Performing competitive analyses to ascertain the value of a technology (e.g., with respect to performance and cost advantages, as compared to baseline and emerging technologies and practices).
- c. Conducting engineering analyses to identify remaining scientific and technical issues for specified technology development efforts, recommending actions and marshalling resources to address the issues, and determining scale-up and balance-of-plant requirements (including developing and evaluating conceptual and detailed equipment/plant designs).
- d. Performing analyses related to environmental and other regulatory issues, including ascertaining the impact of proposed and existing legislation with respect to the intended applications of specified technologies, and providing recommendations to address those issues.
- e. Conducting analyses to ascertain the extent, feasibility, and timing of market acceptance, calculating valuations of specified technologies to assist in developing licensing and cost-sharing strategies, and developing commercialization plans that examine and compare technology transfer and deployment options.
- f. Developing work statements, including cost and schedule estimates, for proposed research and technology development efforts.
- g. Organizing efforts to conduct peer reviews of science and technology development projects, including identifying the appropriate external experts.
- h. Developing expert reports describing the performance of the research and technology efforts for dissemination to the research, regulatory, and business communities.
- i. Assisting in the preparation of documents supporting National Environmental Policy Act (NEPA) compliance, such as Environmental Assessments, Environmental Impact Statements, Records of Decision, Findings of No Significant Impact, Mitigation Action Plans, and other related documents, as well as coordinating and supporting public scoping meetings, public hearings, and other public forums.

#### 4.4 Technical Service Area - Research and Development (R&D) Operations

The Contractor shall support R&D operations primarily on-site, but also, on request, at off-site locations including field testing sites. For a hot link to the listing of current Contractor-operated experimental test facilities located at the Morgantown and Pittsburgh sites see Section 3.0, Application Documents of this SOW. The R&D support activities include, but are not necessarily limited to:

- a. Developing implementation plans that may include recommended design, construction, and operation approaches, as well as detailed cost and schedule estimates, for new equipment/facilities or modifications to existing equipment/facilities.
- b. Designing, fabricating, installing, constructing, modifying, and altering on-site, small-scale R&D facilities and equipment. With respect to the construction of new large-scale facilities and equipment, as well as the modification of existing facilities or equipment that significantly impact a site's or building's structure, infrastructure, or utilities, work under this contract will be limited to the design of such systems. In these instances the Contractor will be expected to work with the site operations Contractor or other NETL Contractors. NETL will determine what constitutes large-scale versus small-scale facilities.
- c. Conducting experiments according to approved experimental plans including CRADAs. These experiments shall be planned and conducted according to NETL's quality assurance, ES&H, and other guidelines (as outlined in orders, operating plans, and procedures documented in NETL's directives system).
- d. Utilizing NETL's work control procedures for planning and execution of work associated with on-site operations and, where applicable, for off-site operations.

- e. Specifying and obtaining devices, equipment, services, supplies, and materials associated with R&D operations. This activity includes performing engineering calculations, conducting computer-aided design and modeling, determining materials specifications, providing quality assurance and quality control to fulfill design requirements, and preparing purchase requisitions.
- f. Developing process and instrumentation drawings (P&IDs) from engineering design plans. The Contractor shall provide a working knowledge of industry instrumentation standards, such as those of Instrument Society of America (ISA), and shall be capable of producing completed P&IDs which shall be suitable for construction of research projects.
- g. Programming distributed control systems and setting up data acquisition systems. The Contractor shall provide programming knowledge of distributed control system software, consistent with NETL operations, which is used to perform automated process control.
- h. Purchasing, installing, calibrating, and maintaining instruments (e.g., process measurement and control devices associated with NETL research projects), but not those associated with systems requiring site-wide interfaces (e.g., gas alarms, hazard alarms, fire alarms, or emergency notification systems).
- i. Providing training (e.g., specific and unique hazards training or operations training related to research operations) necessary for effective and efficient operations while ensuring a safe and healthful workplace environment.
- j. Formulating and modifying standard operating procedures and start-up, testing, inspection, and operating test plans.
- k. Performing facility inspections before, during, and after scheduled R&D operations.
- l. Acquiring, reducing, analyzing, reporting, archiving, and reviewing results from experimental units.
- m. Preparing, reviewing, and/or assessing criteria for process or component performance evaluations and process stream characterization data for inter-process comparison.
- n. Conducting or acquiring analytical measurements of physical and chemical properties of materials utilized in and generated by the R&D operations. This activity includes managing the labeling, shipping, data compilation and data reporting of the samples analyzed by off-site laboratories, as well as maintaining and upgrading hardware and software required for on-site measurement and data analysis. **For a hot link to the list of Contractor-operated analytical equipment see Section 3.0, Applicable Documents of this SOW.**
- o. Assisting in preparing and reviewing documents and packages dealing with ES&H requirements for R&D projects, such as Safety Analysis and Review System (SARS) requirements, environmental management system (EMS) requirements, and conduct of operations requirements.
- p. Providing QA/QC oversight for all activities associated with this contract, including the development and maintenance of a quality program that is consistent with the requirements of NETL and DOE orders.
- q. Reporting results of research projects through preparation of journal articles and other published papers, as well as presentations at technical conferences and other meetings, in collaboration with Federal scientists and engineers.
- r. On request, supporting R&D operations at off-site Federal facilities, Federally-funded facilities, or those sites having a cooperative relationship with NETL (e.g., supporting the installation, testing and performance validation of technology prototypes in the field).
- s. Maintaining project- and process-specific R&D equipment/facilities (e.g., day-to-day maintenance). At the discretion of NETL, the Contractor may also conduct preventative and schedulable maintenance of off-the-shelf R&D equipment managed through the CHAMPS database. Maintenance of site-wide infrastructure and systems do not fall under this contract.

#### 4.5 Technical Service Area - Process Engineering Design and Analysis

The Contractor shall provide a broad spectrum of expert process engineering, cost estimating, and engineering analysis services that include, but are not necessarily limited to:

- a. Performing process engineering, such as: developing and evaluating conceptual process designs, process equipment designs; designs for process optimization, functional specifications, performance estimates, and economic evaluations for energy, environmental, and other processes, facilities, and process equipment; and, preparing system design reports, conceptual design studies, and/or reference plant design studies in sufficient detail and quality for publication.

- b. Preparing cost estimates and analyses of capital and operating costs for technologies and processes, performing cost analyses, cost-benefit analyses, economic analyses, and impact studies and developing economic evaluation techniques for the assessment of key process systems, alternative process designs, alternative program/project implementation strategies, energy and/or environmental R&D projects, schedules, construction plans, and other factors; analyzing costs for factors such as site locations, viability of participant financing, environmental factors, and transportation costs that may impact the process.
- c. Supporting the application of cost estimation software, such as Icarus<sup>®</sup>, to develop cost estimates and cost analysis; developing and documenting specialized cost models for equipment not contained in existing cost model libraries; developing integrated applications of Icarus<sup>®</sup> with other software systems such as ASPEN Plus<sup>®</sup>.
- d. Participating in independent assessments, validations, assessments of project cost estimates and schedules, uncertainty and project technical risk analyses, and cost risk analyses and reporting on the results.

#### 4.6 Technical Service Area - Computational Research, Simulation, and Visualization

The Contractor shall provide a broad spectrum of technical and engineering expertise to support computational research, simulation, and visualization efforts, primarily for in-house research. This work will include the development, application, modification, verification, testing, documentation, reporting, and maintenance of computational methods that can be used to examine systems at various scales and complexities. Applications of computational sciences at NETL include computational chemistry, dynamic simulation, predictive-rating modeling, process optimization, parametric studies, watershed analysis, and the design of process units or plants, as well as regional and national energy systems, with the projection of technical, economic, and environmental performance. Support efforts shall include, but not necessarily be limited to:

- a. Developing, evaluating, validating, applying, interpreting, and preparing reports on environmental representation, process, evaluation, impact, and decision models for all media (e.g., air, water, and soils).
- b. Analyzing and integrating geological, geochemical, and geophysical data from commercial and Government databases; generating three-dimensional geological models for use in resource assessment and recovery analysis; developing geologic screening models; developing, testing, and validating natural gas systems models; analyzing hydrocarbon reservoirs and basins; and providing drilling and stimulation methods studies and site selection studies for fuel projects, including gas hydrates.
- c. Developing, evaluating, validating, documenting, and testing system simulations and engineering process models using ASPEN<sup>®</sup>, or any of its versions, to ensure compatibility with available simulation codes and commercially available simulators. Providing support to NETL tasks with ASPEN<sup>®</sup>, or other simulators, and incorporating improved capabilities into ASPEN<sup>®</sup>. Evaluating other hardware or software products, such as a desktop process simulator to complement ASPEN<sup>®</sup> that could enhance NETL capabilities.
- d. Developing, evaluating, validating, documenting and testing simulations and models using energy system models such as NEMS, GEMSET, and macro-economic models such as DRI's to analyze energy systems and markets. Providing support to NETL tasks with NEMS, GEMSET, or others, to incorporate improved capabilities into these models.
- e. Providing technical assistance and service for specialized hardware and software systems, such as ASPEN<sup>®</sup>, Icarus<sup>®</sup>, ICEM<sup>®</sup> or ICEM-CS<sup>®</sup>, DIPPR<sup>®</sup>, GATE<sup>®</sup>, WAVE<sup>®</sup>, GT/PRO<sup>®</sup>, and PC-Trax<sup>®</sup>, the archival system, and other software development. Supporting maintenance of specialized computer hardware, software, archival, and documentation systems required to perform functions under this task area.
- f. Developing, evaluating, validating, applying, interpreting, and preparing reports on global climate change models that simulate the engineering, economic, and environmental impacts of climate mitigation strategies, including various sequestration options. These models include, but are not limited to, MARKAL<sup>®</sup> and IPM<sup>®</sup>.
- g. Providing technical expertise and support in the area of computational chemistry modeling comprising activities related to the development and application of methods for obtaining fundamental information on molecular processes at small time and distance scales ( $10^{-15}$ s to  $10^{-6}$ s and  $10^{-10}$ m to  $10^{-6}$ m). These include *ab initio* and first principles calculations (e.g., density functional theory), molecular dynamics and Monte Carlo simulations, transition state modeling, and kinetics modeling

- h. Providing application, custom model development, and model validation for simulations describing advanced power generation components and systems using FLUENT<sup>®</sup> and MFX computational fluid dynamics software; ANSYS finite element analysis software; CHEMKIN<sup>®</sup> chemical kinetics software; and process modeling software including ASPEN Plus<sup>®</sup>, ASPEN Custom Modeler<sup>®</sup>, ASPEN Dynamics<sup>®</sup>, and the ASPEN<sup>®</sup>-FLUENT<sup>®</sup> and REI advanced power systems software.
- i. Providing technical expertise, assistance, and support for application and custom development of visualization, virtual reality, and post processing software, including 3D Studio Max<sup>®</sup>; VRtools<sup>®</sup>; ENSIGHT<sup>®</sup>; FLUENT<sup>®</sup>; MFX; and AVS<sup>®</sup>.
- j. Providing hardware and software support for setup and operation of the following computer and visualization systems: scientific local area networks, including maintenance of network security; Linux<sup>®</sup>-based PC clusters; individual research workstations; RAID data storage systems; visualization laboratory facilities; and a high-speed gigapop connection to the Pittsburgh Supercomputer Center. Also to be provided is software installation and administration for all research software packages and developing requirements and specifications for purchases of research computer systems and software.
- k. Providing hardware and software support for NETL R&D activities associated with the supercomputer system located at the Pittsburgh Supercomputer Center and under the Supercomputing Science Consortium ((SC)<sup>2</sup>) agreement, including using supercomputer time for NETL researchers and Contractors; code modifications for parallel computers; scheduling software archiving and retrieval of large data files in its existing facility; assistance and advice on connecting to and using high speed networks such as Esnet; and operating, testing, coordinating, and scheduling the use of a supercluster of computers to be established under the (SC)<sup>2</sup> agreement.
- l. Reporting results of research projects through preparation of journal articles and other published papers, as well as presentations at technical conferences and other meetings, in collaboration with Federal scientists and engineers.

#### 4.7 Technical Service Area - Environmental, Safety, and Health Assurance

The Contractor shall provide ES&H assurance and Integrated Safety Management (ISM) support to all of NETL, including supporting on-site research and site operations. The task is primarily in support of and aligned with the current functions of NETL's Environmental, Safety, and Health Division and the execution of its mission. This mission includes conducting risk assessment, risk reduction, and risk management activities for NETL. Much of the work is geared toward providing assistance through consulting services and implementing requirements within existing DOE/NETL managed ES&H programs, processes, and directives, as well as the regulations, laws, and consensus standards upon which these are based.

These activities include, but are not limited to, the following items summarized below. For the hot link to the sample ES&H task, see Section 3.0, Applicable Documents of this SOW.

- a. Implementing and maintaining programs that support NETL's *environmental compliance, monitoring, and surveillance requirements*. These programs include the Air Quality Program, the Water Quality Program, the Radiological Surveillance Program, and the Waste Minimization and Pollution Prevention Program. A registered professional engineer in either the environmental engineering or the civil/sanitary engineering field shall be part of the on-site support staff. The Contractor shall:
  - Assist in implementing the permitting, compliance, monitoring, surveillance, reporting, and emergency response requirements of NETL's environmental programs.
  - Provide recurring environmental consulting services to NETL personnel as requested.
  - Support the process of reviewing and revising NETL's environmental directives (e.g., orders, operating plans, and procedures) and associated implementing plans.
  - Assist and support NETL's efforts to maintain Environmental Management System (e.g., ISO-14001) certification.
  - Provide ISM support.
- b. Implementing and maintaining programs that support NETL's *hazardous waste management program*.

These activities include, but are not limited to, the following:

- Assisting in implementing the permitting, compliance, monitoring, surveillance, reporting, and emergency response requirements of NETL's hazardous waste program.
  - Operating and maintaining NETL's Chemical and Waste Handling Facilities (i.e., the Chemical Handling Facility at the Pittsburgh, PA site and Building-33 at the Morgantown, WV site).
  - Maintaining waste materials inventories (including accumulation date and material characterization and identification information).
  - Performing inspections of materials received.
  - Ensuring that employees and subcontractors have received the necessary training to work safely in these facilities and to abide by applicable environmental regulations and transportation regulations.
  - Preparing hazardous waste manifests and land disposal restriction documents.
  - Archiving documentation according to DOE record management schedules.
  - Obtaining chemical analyses where needed or requested to determine chemical identity for classification as a hazardous or regulated substance.
  - Performing hazardous wastes packaging and labeling prior to shipping for disposal, as well as arranging (through subcontracts) shipments of hazardous and regulated substances to appropriate treatment, storage, and disposal facilities.
- c. Providing *industrial hygiene and occupational medical support services* for NETL facilities and assisting in implementing the permitting, compliance, monitoring, surveillance, reporting, and emergency response requirements of NETL's industrial hygiene and occupational medicine programs. A certified industrial hygienist shall be part of the on-site support staff at the Pittsburgh and Morgantown locations. This activity includes the operation of occupational health units staffed with licensed occupational nurses and physicians and providing support to the industrial hygiene and occupational medicine program, including conducting efforts related to:
- Ergonomics.
  - Personnel exposure and workplace monitoring.
  - Ventilation.
  - Personal protective equipment (PPE) use.
  - Medical, occupational health, and wellness programs.
  - Radiation monitoring.
  - Chemical inventory programs.
  - Hazards communication (HAZCOM) programs.
  - Safety and health directives development and updates.
  - Internal audits.
  - Asbestos sampling, monitoring, and oversight.
- d. Providing *safety support services and ES&H compliance training* and assisting in implementing the permitting, compliance, monitoring, surveillance, reporting, and emergency response requirements of NETL's safety and ES&H training programs. A certified safety professional shall be part the on-site support staff. These efforts will support:
- Compliance-oriented safety programs.
  - Safety evaluations.
  - Emergency preparedness and response program.
  - Fire protection program.
  - R&D Safety Analysis and Review System (SARS).
  - Support Operations SARS.
  - Facility SARS.
  - Site inspections.
  - Accident investigations.

- Occurrence reporting.
  - Safety directives development and updates.
  - Performance measurement program.
  - ES&H training, including the design, development, and deployment of computer-based training modules.
  - Tracking of ES&H training.
- e. Providing ES&H support to NETL's *site operations* activities. This support shall include providing oversight and technical assistance on ES&H matters with respect to site operations activities that involve or impact safety, industrial hygiene, and environmental requirements. For example, the Contractor shall provide technical assistance on ES&H issues associated with:
- NETL-Pittsburgh Wastewater Treatment Facility (e.g., issues dealing with permitting, plant operations, process automation, and chemistry).
  - NETL refrigerant (e.g. ozone-depleting substances) management program.
  - General construction activities.
  - Grounds-keeping, janitorial, and site maintenance activities.
  - Management of fire protection systems and gas alarms.
- f. Providing personnel and expertise to support *off-site remediation* at NETL-owned sites, leased sites, or sites where NETL is the authority having jurisdiction. Current off-site remediation work is being performed at the Hoe Creek Underground Coal Gasification Test Site located near Gillette, WY; the Rock Springs Oil Shale Retort Site located near Rock Springs, WY; and the Rocky Mountain 1 Site and the DOE Hanna Underground Coal Gasification Site near Hanna, WY. During the course of this contract, other sites may be identified requiring remediation support. Remediation support shall include, but not be limited to:
- Performing intermittent minor maintenance, including re-vegetation, at field sites identified by NETL.
  - Conducting field operations related to groundwater remediation at Rock Springs, WY (as well as other sites).
  - Ensuring remediation site(s) compliance with Federal, state and local requirements.
  - Providing support and assistance with regard to analyses, reports, and presentations.
  - Preparing reports and presentations relative to current and planned operations and activities.
  - Investigating the location of abandoned wells which were drilled as part of previous DOE R&D activities.
  - Investigating other inactive waste sites (e.g., performing Phase I/Phase II investigations, remedial investigation/feasibility studies, and remediations).
- g. Assisting in the development, management, and tracking of all NETL directives (e.g., orders, operating plans, and procedures) and supporting the quality management systems and processes associated with document (including directives) control.

The Contractor shall adhere to all pertinent NETL ES&H Focused Standards as indicated in the Focused Standards list which is currently posted on the SSC electronic reading room under Section 5.0, Directives and Policies located at [www.netl.doe.gov/business/solicit/ssc2003/index.html](http://www.netl.doe.gov/business/solicit/ssc2003/index.html). After contract award, the list will be available at the following NETL Intranet site: <http://intranet/project/ESHINFO/standard/focused.pdf>. This Focused Standards List has been primarily derived from selected Standard References contained in NETL issued directives. This list is the totality of ES&H standards and requirements that (through analysis of specific operations) apply to NETL's operations. It should not be construed that all of the standards on the list would be applicable to operations required under this contract.

#### 4.8 Service Area - Management Performance

The Contractor shall use management structures, systems and operations that provide NETL with innovative, quality, cost effective, safe, and environmentally responsible R&D support services. In addition, the Contractor

shall conduct all work in a manner that shows continual improvement and complies with all applicable laws, regulations, and terms and conditions of the contract, including attaining socioeconomic goals.

## 5.0 PERFORMANCE REQUIREMENTS SUMMARY

Performance requirements of this contract are expressed in the following manner:

Each performance requirement will contain the following three elements. In each case, when taken together, these elements constitute a performance requirement.

**Performance Objective** - A statement of the outcome or results expected for the work accomplished under the various task orders which will be issued under the contract. Performance objectives for the Technical Service Areas depicted in Sections 4.1 through 4.7 will be set forth in the individual task orders issued.

**Performance Measures** - The critical few characteristics or aspects of achieving the objective that will be monitored by the Government, i.e., those things about which the Government will be gathering data for the purpose of evaluating the performance of the Contractor. Performance objectives identified in each task order may have one or more measures. The list of suggested performance measures is provided below. A more detailed definition of what is covered in a particular performance measure and what the key factors are in the measure that will be considered for evaluation purposes is identified in the Performance Requirements Summary Table below under Description of Performance Measures.

**Performance Expectations** - The targeted level or range of levels of performance for each performance measure. Performance expectations for the performance measures listed below are located in Part III, Section J, Attachment C, Performance Evaluation Plan.

The following Performance Requirements Summary identifies the list of performance measures, one or more of which will be applied to performance objectives in task orders issued under this contract covering work accomplished under the Technical Service Areas in Sections 4.1 through 4.7 and the Management Performance service area in Section 4.8.

PERFORMANCE REQUIREMENTS SUMMARY TABLE

Performance Measures	Description of Performance Measures	Performance Expectations
Quality of Work Products	DOE will assess the degree to which work products are accurate (i.e., free of typographical, grammatical, mathematical, and conceptual errors), complete and relevant with regard to DOE requests, professional in appearance and format, and accepted by DOE without revision.	Work products are (1) always accurate, complete, relevant, and professional, and are (2) always accepted without revision.
Quality of Work Processes	DOE will evaluate the degree to which the Contractor executes work processes in adherence to, and compliance with, established procedures without intervention from the Government.	Work processes (1) are always executed according to prescribed procedures, and (2) require no intervention from the Government.
Productivity	DOE will assess the completion of tasks and the quantity of work performed with respect to that planned, expected, or assigned.	Tasks are always completed as assigned, and the quantity of work performed frequently exceeds that planned, expected, or assigned.



**PERFORMANCE REQUIREMENTS SUMMARY TABLE**

<b>Performance Measures</b>	<b>Description of Performance Measures</b>	<b>Performance Expectations</b>
Schedule Control	DOE will assess the timeliness of deliverables, completion of milestones, and responsiveness to DOE requests, or range of schedule variance.	Milestones, deliverables and DOE requests are always completed on time, or schedule variance is always zero and always a positive number.
Cost Control	DOE will assess adherence to budgets and accuracy of cost estimates, or range of cost variance.	Work is always under budget, costs are always accurately estimated, and cost control measures have been effectively demonstrated.
ES&H Compliance	DOE will assess the achievement of all of the ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics, and Federal, state, and local regulations, <u>and</u> initiatives for continuous improvement.	Applicable ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics, and Federal, state, and local regulations are always achieved, <u>and</u> continuous improvement initiatives are usually achieved.
Value Added	DOE will assess the Contractor for its ability to recommend and implement, if approved, innovative and creative approaches to performing work that result in significant benefits in quality, cost, timeliness, and productivity, and, when appropriate, significantly advances or augments NETL's scientific and technological capabilities.	The Contractor frequently recommends and implements innovative and creative approaches that have actual or potential significant benefits, and that significantly advance or augment NETL's scientific and technological capabilities.

**6.0 GLOSSARY**

**6.1 Acronyms**

<u>Acronym</u>	<u>Definition</u>
CIH	Certified Industrial Hygienist
CSP	Certified Safety Specialist
CRADA	Cooperative Research and Development Agreement
DOE	Department of Energy
DRI	Data Resource Institute
EMS	Environmental Management System
ES&H	Environmental, Safety and Health
GOGO	Government-Owned and Government-Operated
GPRA	Government Performance and Results Act
HAZCOM	Hazards Communication
ISA	Instrument Society of America
ISM	Integrated Safety Management
LAN	Local Area Network
MGN	Morgantown
M&O	Management and Operation (refers to a type of DOE contract)
NEPA	National Environmental Policy Act
NETL	National Energy Technology Laboratory

OHU	Occupational Health Units
OMB	Office of Management and Budget
OSHA	Occupational, Safety and Health Administration
PGH	Pittsburgh
P&IDs	Process and Instrumentation Drawing
PPE	Personal Protective Equipment
R&D	Research and Development
RDS	Research and Development Support
REI	Reaction Engineering International
SARS	Safety Analysis and Review System
(SC) <sup>2</sup>	Supercomputing Science Consortium

## 6.2 Words/Phrases

Core work – predictable, schedulable, and recurring work of a longer duration (typically 1 year or more)

Large-scale – construction or modification of an on-site R&D facility that involves significant addition, deletion, or change to a site’s or building’s structure, infrastructure, or utilities. Such an effort would be limited in this contract to the design phase, with the construction phase being completed by the site operations support Contractor. NETL will make the determination of what facilities constitute large-scale versus small-scale.

Off-site – any location not on one of the NETL sites as defined in “on-site” below.

On-site – Federally-owned or leased property within the defined boundaries of the sites at Pittsburgh, PA; Morgantown, WV; Tulsa, OK; and Fairbanks, AK, including, in the case of Morgantown, NETL-leased space in the Research Ridge complex immediately adjacent to the boundary.

Small-scale – construction or modification of an on-site R&D facility that does not involve significant addition, deletion, or change to a site’s or building’s structure, infrastructure, or utilities. Such an effort would be conducted primarily within this contract. NETL will make the determination of what facilities constitute large-scale versus small-scale.

Variable work – work that is shorter term (typically less than 1 year) and variable in nature with respect to the amount of work, the timing of work, the duration of work, and the scope of work.

# REPORTING REQUIREMENTS CHECKLIST

1. AWARDEE:  2. IDENTIFICATION NUMBER: DE-RP26-04NT41817

3. REPORT SUBMISSION:

Reports shall be submitted to the electronic and mailing addresses indicated on the NETL-identified Distribution List which will be provided in the post award debriefing.

4. PLANNING AND REPORTING REQUIREMENTS

	FORM NO.	FREQ.	NO. OF COPIES		FORM NO.	FREQ.	NO. OF COPIES
<b>A. GENERAL MANAGEMENT</b>				<b>E. TECHNICAL (One paper copy and One PDF electronic file copy)</b>			
* <input checked="" type="checkbox"/> Management Plan	None	O	**	<input type="checkbox"/> Technical Progress Report	None		
* <input checked="" type="checkbox"/> Status Report	None	M	**	Final Report			
* <input checked="" type="checkbox"/> Summary Report	1332.2	M	**	<input type="checkbox"/> Draft for Review	None		
* <input checked="" type="checkbox"/> Performance Self Assessment Report	None	E	**	<input type="checkbox"/> Final for Approval	None		
<b>B. SCHEDULE/LABOR/COST</b>				<input type="checkbox"/> Topical Report			
* <input type="checkbox"/> Milestone Schedule/Plan	1332.3			<b>F. PROPERTY</b>			
* <input type="checkbox"/> Labor Plan	1332.4			<input checked="" type="checkbox"/> Report of Contractor's Property Management System	None	P	**
* <input type="checkbox"/> Cost Plan	1332.7			<input checked="" type="checkbox"/> Annual Report of Property in The Custody of Contractor	F580.1-8	YP	**
<input type="checkbox"/> Milestone Schedule/Status Report	1332.3			<input checked="" type="checkbox"/> High Risk Property Report	F580.1-25	YP	**
<input type="checkbox"/> Labor Management Report	1332.8			<input checked="" type="checkbox"/> Report of Physical Inventory of Capital Equipment	None	I	**
<input checked="" type="checkbox"/> Cost Management Report	See Text	M	**	<input checked="" type="checkbox"/> Report of Physical Inventory of Sensitive Items	None	YP	**
<b>C. EXCEPTION</b>				<input checked="" type="checkbox"/> Report of Termination or Completion Inventory	SF-1428; SF-120; F580.1-7	FC	**
<input type="checkbox"/> Conference Record	None			<b>G. OTHER</b>			
<input checked="" type="checkbox"/> Hot Line Report	None	A	**	<input type="checkbox"/> Key Personnel Staffing Report	None		
<input type="checkbox"/> Journal Articles/Conference Papers and Proceedings	None			<input checked="" type="checkbox"/> Subcontracting Report	SF-294	SS	**
<b>D. ENVIRONMENTAL ES&amp;H</b>				<input checked="" type="checkbox"/> Summary Subcontracting Report	SF-295	YS	**
<input checked="" type="checkbox"/> Hazardous Substance Plan	None	O	**	<input type="checkbox"/> Software	None		
<input checked="" type="checkbox"/> Hazardous Waste Report	None	FC	**	<input checked="" type="checkbox"/> Staffing Report Summary	See Text	M	**
<input checked="" type="checkbox"/> ES&H Hot Line Report	None	A	**	<input checked="" type="checkbox"/> Invoice Detail Report	See Text	M	**
<input checked="" type="checkbox"/> DOE NETL ES&H Reports (DOE O 231.1, M 231.1-1, O 232.1)	See Text	A	**	<input checked="" type="checkbox"/> Contract Organization Chart	See Text	S	**
<input checked="" type="checkbox"/> Integrated Safety Management Plan (DOE 450.4)	See Text	O ***	**				

5. Frequency Codes and Due Dates:

Definition	Calendar days due after event	Definition	Calendar days due after event
A - As Required (See attached text for applicability)	0	O - Once After Award	30
C - Contract Change	15	Q - Quarterly (End of Calendar Quarter)	30
FC - Final End of Effort	0	S - Semi-Annual (End of project year and project year half)	20
FD - Final Technical - Draft Version	-60	Y - Yearly (End of project year, see narrative for details)	30
M - Monthly	15	PY - Yearly Plan for following Federal Fiscal Year	
E - End of Evaluation Period	20		

Property Reports

P - Property Management System - Within 6 months of award date  
YP - Yearly Property - due 10/15 for period ending 9/30  
I - Physical Inventory of Capital Equipment - Biennial from award start date

Other

SS - Subcontracting Report - Semi-Annual due 4/30 and 10/30 for period Ending 3/31 and 9/30 respectively  
YS - Summary Subcontracting - Annually due 10/30 for period ending 9/30

\* The yearly plans, identified as required in Sections 4A and 4B, are due by September 15 for the following Federal Fiscal Year

\*\* Reports are to be distributed electronically, along with two (2) hard copies, to the NETL-identified distribution list. Report formats that are indicated shall not be deviated from. If the submission involves a DOE Standard Form, the Contractor may submit the requested information in a format of its own choosing, as long, as the same information is provided. The reports in this checklist apply to the contract in general. The Statement of Work for Tasks and Subtasks may require other specific reports and/or deliverables

\*\*\* Plan is to be updated annually.

6. SPECIAL INSTRUCTIONS:

The forms identified with a DOE Form No. in the above checklist are available at <http://www.netl.doe.gov/business/forms/forms.html>

**J.4 GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS (MAR 1999)**

The Contractor shall prepare and submit the plans and reports indicated on the "Reporting Requirements Checklist" to the electronic addresses and mailing addresses provided in the NETL-identified Distribution List. The Distribution List will be provided at the post award debriefing with the Contractor. The level of detail the Contractor provides in the plans and reports shall be commensurate with the scope and complexity of the effort and shall be as delineated in the guidelines and instructions contained herein. The prime Contractor shall be responsible for acquiring data from any subcontractors to ensure that data submitted are compatible with the data elements which prime Contractors are required to submit to DOE.

**J.5 MANAGEMENT PLAN (JAN 2000)**

The Management Plan describes the Contractor's approach to performing the effort and producing the products identified in the contractual agreement, and the technical, schedule, cost, and financial management control systems to be used to manage performance.

The outline for the Management Plan and a description of the contents follows:

**EXECUTIVE SUMMARY** -- The executive summary gives DOE/NEIL's management a brief, comprehensive overview of the most important aspects of the management plan.

**BACKGROUND** -- This is a discussion of the background of the project, including the scientific, sociological, legislative, and historical factors, that demonstrates the Contractor's understanding of the problems, both technical and management, associated with the project.

**SCOPE OF THE PROJECT** -- This section gives a brief overview of the project. It should include:

general description of project objectives;  
task titles and short descriptions.

**WORK BREAKDOWN STRUCTURE (WBS)** -- The scope and complexity of the contractual agreement influence the number of levels required. Each descending level represents an increasingly detailed definition of the work elements. Level 1 is the goal or objective of the contractual agreement in its entirety. Level 2 consists of the major work products necessary for achieving the goals of the contractual agreement. Level 3 outlines the major element segments (subsystems) necessary for completing Level 2 elements. Work breakdown structure elements are identified by name and number from a progressive, alphanumeric system. For example:

Example:

WBS Level 1: The overview should describe the philosophy underlying the selected technical approach.

WBS Levels 2 and 3: \_\_\_\_\_

WBS ELEMENT X.X: \_\_\_\_\_ (TITLE)

**OBJECTIVE:** State the objective of the task in a concise manner.

**BACKGROUND (Not required for Construction Tasks):**

With respect to the project objective, what is the current state of understanding?

Given the state-of-the-art, what are the outstanding issues which must be resolved in order to make progress?

**TECHNICAL APPROACH (Not required for Construction Tasks):** Describe in detail the manner in which the various issues will be resolved. The following are aspects of the work which should be considered and addressed (along with others you feel appropriate):

What experiments will be performed and why?  
What materials will be used?  
What are the experimental conditions?  
What analytical techniques will be employed?  
What will be the approach to modeling?

In answering these questions, you should consider how the various tasks relate to one another and to other relevant ongoing work. Task outputs which feed into other tasks (and vice-versa) should be clearly delineated.

**DELIVERABLES (Not required for Construction Tasks):** Describe specifically the results of the task. These should include:

raw and reduced data and method of presentation;  
brief description of models to be developed;  
other key results as appropriate.

**SUPPORT SYSTEMS AND CONTROLS** – In this section, the management, technical, and administrative system that will be used to control and execute the project will be described. Examples of the systems include: systems and engineering analysis, quality assurance, environmental, safety and health, legal support, ADP support, and accounting support.

#### **J.6 STATUS REPORT (MAR 1999)**

The Status Report is the Contractor's project manager brief narrative assessment (by WBS) of the work actually performed and the overall status of the various tasks.

The Status Report provides a concise narrative assessment of the status of the work being performed under the contractual agreement. DOE management uses the report to monitor status and to provide early recognition of potential problem areas. The report highlights changes to objectives, changes to technical approach, relationship to previously planned activities, task variances from baselines in excess of stipulated thresholds by WBS reporting element, causative factors, and actions taken or proposed to resolve them, list of presentations and publications, as well as factors with potential for causing significant variances in the future. Task progress of major accomplishments for each task in bullet form may also be highlighted. The report identifies open items requiring action by DOE or the Contractor. The report also provides a summary assessment of the current situation, including forecast of the near future and the expected impact on project accomplishment.

#### **J.7 SUMMARY REPORT (DOE F 1332.2) (MAR 1999)**

The Summary Report provides a concise, top-level summary of schedule, labor, and cost performance against the baseline plans. Most data are presented graphically. The format permits rapid visual comparison of schedule, labor, and cost data. There are three segments: a cost status graph, a labor status graph, and a milestone chart. The cost and labor graphs are cumulative presentations. Planned and actual numerical data presented are for the period specified. Labor and cost variances are shown on a monthly and cumulative basis.

#### **J.8 PERFORMANCE SELF ASSESSMENT REPORT**

For all contract tasks and subtasks involved in an award-fee determination, the Contractor is to provide a self-assessment of work performed during the previous quarters. This report is to include a comprehensive summary of the activities implemented and a self-assessment of performance based quality, schedule, and management performance criteria.

#### **J.9 COST MANAGEMENT REPORT (2003)**

## **PURPOSE**

The Cost Management Report provides a monthly status of actual and estimated costs, funding and plan values, as well as a projection of the funds expiration, for each task and subtask within a designated contract. This report serves as an accounting and project management tool. This report will be used by Federal personnel to monitor the funding and cost status of the contract, verify the reasonableness of the Contractor's invoices, formulate budgets and calculate award fee pools.

## **FORM**

An Adobe (.pdf) file has been included in Part III, Section J, Attachment B-1. This is the required format that must be utilized for submission of this report. An Excel version of the file has been posted to the electronic reading room for this solicitation under 2.0 Referenced Documents in SOW. This file may be downloaded from the following Internet site, during the solicitation phase of this procurement:  
<http://www.netl.doe.gov/business/solicit/ssc2003/index.html>

## **INSTRUCTIONS**

- Item 1. Enter the official contract title.
- Item 2. Enter the inclusive start and completion dates for the reporting period.
- Item 3. Enter the official contract number and, if a modification(s) has occurred, append the latest modification number.
- Item 4. Enter the name and address of the Contractor.
- Item 5. Enter the date of the contract's current cost plan, which serves as a baseline for this report.
- Item 6. Enter the official start date of the original contract.
- Item 7. Enter the official completion date as of the latest modification to the contract.
- Item 8. Enter the task numbers, in numerical order, consistent with the contract's Work Breakdown Structure. Modifications to the task will be tracked by an alpha added to the end of the task with "A" designating the first modification.
- Item 9. Enter the budgeting and reporting (B&R) number(s) that is (are) to fund the task. If more than one B&R number is being used, place the pertinent funding information on separate lines.
- Item 10. Enter the cost code which is made up of a financial plan designation and a NETL cost center. The financial plan code is the first two alphas. The following 4 character alpha numeric is NETL's cost center. If more than one cost code is being used, place the pertinent funding information on separate lines.
- Item 11. Enter the program/order number that designates NETL customer work. If more than one number is being used, place the pertinent funding information on separate lines.
- Item 12. Enter the amount of funds that have been obligated against the task in the current fiscal year.
- Item 13. Enter the total obligations awarded to the contract as of the close of the reporting period.
- Item 14. Enter the Approved FY Cost Plans, an estimate of the cost of work planned in the current fiscal year distributed by funding source. Only plan values authorized by the CO shall be recorded in this column.
- Item 15. Enter the total authorized plan value for the entire performance period of the task, which may span multiple fiscal years.

- Item 16. Enter the total actual cost incurred for the reporting period.
- Item 17. Enter the total planned cost for the reporting period as shown in the most recent authorized task work plan.
- Item 18. Enter the total actual cost incurred as of the close of the reporting period for the current fiscal year.
- Item 19. Enter the balance remaining of the planned cost for the current fiscal year as shown in the latest "Approved FY Cost Plan" (item 14).
- Item 20. Enter total actual cost incurred for the task from the inception of the contract to the end of the reporting period.
- Item 21. Enter the total authorized planned cost for the task from the inception of the contract to the date of the report.
- Item 22. Enter the "Next Period Commitments" defined as the cost to be invoiced to NETL during the next period and amounts incurred by the end of the reporting period but not yet invoiced. This would include subcontractor costs and award fee.
- Item 23. Enter the "FY Total Cost" which is defined as the costs that the Contractor expects to incur during the current fiscal year. This will equate to the, "FY To Date Actuals" plus the balance of the year. A contract project manager's estimate may be used to project the balance of the year and should include those costs which have been incurred but not invoiced to NETL.
- Upon completion of the first award fee period estimates for fee shall be based on the average of historic fee earned, not 100% of available fee.
- Special consideration should be made to estimate subcontract costs when the prime has not received invoices but is aware that work has occurred.
- Item 24. Enter the date on which the funds available to the Contractor for a specific task or activity are expected to be fully expended.
- Item 25. Enter notes that relate to tasks financial status. Modifications received after the closing date of the reporting period but before the due date of the CMR should be included.
- Item 26. Enter the subtotal of all tasks identified as Fossil Energy (FE) work.
- Item 27. Enter the subtotal of all tasks identified as Non FE work.
- Item 28. Enter the total of all costs for each column that can be summed. If multiple pages are used, enter the total only on the final page.
- Item 29. Enter the unit measure for dollar amounts shown (e.g., exact dollars). NETL cost entries are done to the penny. Carry the unit of measure out to decimals (e.g., cents) but format the cell to round so space will be saved. NETL Finance will reformat the appropriate column to two decimals for the purpose of making cost entries.
- Item 30. Enter the signature of the responsible Contractor project manager and the date signed, verifying the validity of the furnished information based upon the project manager's knowledge of the contract's current progress and status.
- Item 31. Enter the signature of the Contractor's financial representative and the date signed, verifying the validity of the furnished information based upon the financial representative's knowledge of the contract's current progress and status.
- \* Any reference to a fiscal year refers to the Federal Government fiscal year, October 1 through September 30 of the following year.

## **J.10 HOT LINE REPORT (MAR 2002)**

The "Hot Line" Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; an environmental, safety and health violation; achievement of or failure to achieve an important technical objective; or any requirement for quickly documented direction or redirection. The report shall be submitted by the most rapid means available, usually electronic, and should confirm telephone conversations with DOE representatives. Identification as a "Hot Line Report" serves notice at each link in the delivery chain that expedition in handling is required. Unless otherwise agreed by the parties involved, DOE is expected to take action and respond in a similarly timely manner. The report should include:

1. Contractor's name and address;
2. Contract title and number;
3. Date;
4. Brief statement of problem or event;
5. Anticipated impacts; and
6. Corrective action taken or recommended.

Hot line reports shall document the incidents listed below:

1. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
2. Any significant environmental permit violation is to be reported as soon as possible, but within 24 hours of the discovery of the incident.
3. Other incidents that have the potential for high visibility in the media are to be reported as quickly as possible, but within 24 hours following discovery.
4. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but within 24 hours of the discovery of the failure.
5. Any unplanned event which is anticipated to cause a schedule slippage or cost increase significant to the project is to be reported within 24 hours.
6. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release which is in violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported, but within 24 hours of the discovery of the accident.
8. Any incident which causes a significant process or hazard control system failure, or is indicative of one which may lead to any of the above defined incidents, is to be reported as soon as possible, but within 5 days of discovery.

The requirement to submit Hot Line Reports for the incidents identified in 1, 2, 3, 6, or 7 is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public.

When an incident is reported in accordance with 4, 5, 6, 7, or 8, the Contractor shall conduct an investigation of its cause and make an assessment of the adequacy of resultant action. A written report is required no later than ten (10) calendar days following the incident and shall include an analysis of the pertinent facts regarding the cause, and a schedule of the remedial events and time periods necessary to correct the action.

When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first; if possible, and coordinated with NETL's Office of Public Affairs, the Contracting Officer Representative (COR) and the Contracting Officer.



### **J.11 ENVIRONMENTAL (MAR 2003)**

In response, in part, to the requirements of the National Environmental Policy Act of 1969 (NEPA), ISO 14001, and other related environmental statutes, NETL requires the submission of various documents that assess the environmental aspects and projected impacts of all of its proposed actions. These documents may include the following: (1) Hazardous Substance Plan; (2) Hazardous Waste Report; (3) Environmental Compliance Plan; (4) Environmental Monitoring Plan; and (5) Environmental Status Reports; and (6) ISO 14001 forms (if applicable).

The environmental information provided in these documents will enable NETL to fulfill its responsibilities under NEPA (additional information about the requirements of the National Environmental Policy Act can be found in the DOE NEPA Compliance Guide and 40 CFR 1021) and to monitor the proposer's compliance with other environmental regulations. The implementation of any task associated with a proposed action will be dependent upon DOE submitting and acquiring approval of necessary NEPA documentation. Therefore, to minimize the risk of project delays, it is imperative that these reports be submitted in a timely manner.

The information contained herein specifies the basic environmental requirements for this procurement action, but it is not to be interpreted as containing all necessary information for any given project. Likewise, certain aspects of the requirements may not be applicable. Accordingly, the level of information provided should be sufficient for DOE to assess the environmental implications of the proposed action.

### **J.12 HAZARDOUS SUBSTANCE PLAN (MAY 1999)**

The Contractor shall submit a Hazardous Substance Plan not later than thirty (30) days after initial contract award. The Plan shall specifically identify each Hazardous Substance (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") anticipated to be purchased, utilized or generated in the performance of this contract. For each such Hazardous Substance identified, the Plan shall specifically provide the following information:

- Description of Substance/Chemical
- EPA Hazardous Waste Number
- EPA Hazard Code
- Anticipated Quantity to be purchased, utilized or generated
- Anticipated Hazardous Waste Transporter
- Anticipated Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)
- Anticipated Treatment Method

### **J.13 HAZARDOUS WASTE REPORT (MAY 1999)**

The Contractor shall submit a Hazardous Waste Report at the completion of contract performance. The Report shall specifically identify each Hazardous Waste (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") actually utilized, or generated in the performance of this contract. For each such Hazardous Waste identified, the Report shall specifically provide the following information:

- Description of Substance/Chemical
- EPA Hazardous Waste Number
- EPA Hazard Code
- Actual Quantity Disposed
- Actual Hazardous Waste Transporter
- Actual Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)
- Actual Disposal Date
- Actual Treatment Method

The Hazardous Waste Report is intended as a final reconciliation of anticipated versus actual Hazardous Substances purchased, utilized, or generated in the performance of this contract.

### **J.14 ES&H HOT LINE REPORT**

A. The "ES&H Hot Line Report" is to be used to report an ES&H violation. The report must be submitted by the most rapid means available, usually electronic, and is to confirm telephone conversations with the DOE Representatives. Identification as an "ES&H Hot Line Report" serves notice at each link in the delivery chain that speed in handling is required. The report must include:

1. Contractor's name and address
2. Contract title and number
3. Date
4. Brief statement of problem or event
5. Anticipated impacts
6. Corrective action taken or recommended

B. ES&H Hot Line Reports are to be used to document incidents such as those listed below:

1. Any non-compliance with the provisions of Clause H 36 ENVIRONMENTAL, SAFETY, AND HEALTH-ON-SITE SERVICE CONTRACTS is to be reported within 3 days unless specified otherwise below.
2. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
3. Any significant environmental permit violation is to be reported as soon as possible, but no later than 24 hours following the discovery of the incident.
4. Other ES&H incidents that have the potential for visibility in the media are to be reported as quickly as possible, but no later than 24 hours following the discovery of the incident.
5. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but no later than 24 hours following the discovery of the failure.
6. Any verbal or written Notice of Violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release that is in violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
8. Any incident that causes a significant process- or hazard-control-system failure, or is indicative of one that may lead to any of the above-defined incidents, is to be reported as soon as possible, and must be reported within 5 days of discovery.
9. When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first, if possible, by NETL's Public Relations Officer and coordinated with the COR.

#### **J.15 DOE NETL ES&H REPORTS IN SUPPORT OF DOE/NETL'S ENVIRONMENT, SAFETY, AND HEALTH REPORTING REQUIREMENT**

- A. The Contractor shall provide information and reports to NETL in support of DOE's reporting requirements contained in DOE O 231.1, ENVIRONMENTAL, SAFETY, AND HEALTH REPORTING, DOE M 231.1-1, ENVIRONMENTAL, SAFETY, AND HEALTH REPORTING MANUAL, and DOE O 231.1, OCCURRENCE REPORTING AND PROCESSING OF OPERATIONS INFORMATION. Content, form, schedule, and applications are provided in the DOE Orders.
- B. Data, information, or reports include, but are not limited to, the following areas (if applicable):

1. Work-related fatalities, injuries, and illnesses among Contractor employees arising out of work performed primarily at DOE-owned or -leased facilities
  2. Work-hours and vehicle usage
  3. Estimated property valuation
  4. Interim exposure data reporting
  5. Annual exposure data reporting
  6. Radiological exposure to individuals
  7. Annual summary of fire damage
  8. Epidemiologic analyses-excess injuries and illnesses
  9. Occupational, safety, and health information in support of epidemiological studies conducted by external organizations
  10. Quarterly, DOE and NEIL ES&H performance indicator data
  11. Annual site environmental reports
  12. Annual tabulation of ES&H and quality-related assessments conducted
- C. As needed, information reports associated with the notification, recording and reporting requirements for accidents and/or incidents shall be prepared in accordance with 29 CFR 1904 and 1910. The Contracting Officer or his/her representative shall be provided with copies of all OSHA-required documentation within 10 days of the associated accident and/or incident.
- D. On a quarterly basis, the Contractor shall report on the following NEIL environment, safety, and health indicators (if applicable):
1. Recordable Injury/Illness Rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked)
  2. Lost Workday Case Rate (total number of OSHA-defined lost workday cases/total hours worked)
  3. OSHA Cost Index (estimated cost of workplace-related injuries and illnesses)
  4. Hazardous Waste Generated (total cubic feet of hazardous waste shipped)
  5. Metrics and reporting information cited in the Contractor Integrated Safety Management (ISM Plan)

#### **J.16 INTEGRATED SAFETY MANAGEMENT PLAN**

An Integrated Safety Management (ISM) Implementation Plan shall be developed and submitted by the Contractor. The plan shall describe how the offeror will implement ISM philosophy, as outlined in DOE P 450.4, Safety Management Policy, and Integrated Safety Management System Guide, DOE G 450 4-1, Volumes 1 and 2, into the planning, budgeting, executive, and assessment of work activities. The plan shall provide (1) a process approach to the integration of ISM's five steps (i.e., defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance) into its everyday work activities; (2) a

specific management approach to demonstrate ISM's seven guiding principles (i.e., workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balance priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization); and (3) a discussion on how the execution of the offeror's plan will successfully and cost-effectively integrate with NETL's own ISM and ES&H programs for on-site work to be conducted. An annual updated plan is also required.

**J.17 PROPERTY REPORTS (JAN 2000)**

NETL's Property Handbook entitled "Management of Government Property in the Possession of Contractors," contains forms, instructions, and suggested formats for submission of property reports. This handbook can be found at <http://www.netl.doe.gov/business/index.html>

**J.18 REPORT OF CONTRACTOR'S PROPERTY MANAGEMENT SYSTEM (JAN 2000)**

This report shall consist of the Contractor's comprehensive written property management system and is due within 6 months of the contract award date. It shall address the Contractor's written system for controlling, protecting, preserving and maintaining all Government property. The report format shall be consistent with Contractor's system and shall as a minimum enable comprehensive evaluation by the Government. (If not provided in your local format, see sample in NETL's Property Handbook).

**J.19 ANNUAL REPORT OF PROPERTY IN THE CUSTODY OF CONTRACTORS (NETL F 580.1-8) (JAN 2000)**

This report includes ALL Government-owned Contractor-acquired and Government-furnished property and materials for which the Contractor is accountable to the Government. This report shall also include Government Property at subcontractor's plants and alternate locations. This report is submitted on NETL F 580.1-8 for the period ending September 30 and is due by October 15.

**J.20 HIGH RISK PROPERTY REPORT (NETL F 580.1-25) (SEPT 2000)**

Some property, because of its peculiar nature, its potential impact on public health and safety, on the environment, on security interests, or on proliferation concerns, must be handled, controlled, cleared and disposed of in other than the standard manner. High-risk property includes property which is: 1) nuclear-related; 2) proliferation-sensitive or export controlled; 3) chemically, biologically, or radiologically contaminated; 4) national security/military interests; and 5) hazardous materials and wastes. Further definitions of high-risk property can be found at <http://www.pr.doe.gov/ppl.html>. This report is required by the DOE for the control (acquisition, management and disposal) of high risk property to ensure that such disposition does not adversely affect public safety and/or the environment, national security, or nuclear nonproliferation objectives of the United States. This report shall be submitted for the period ending September 30 and is due by October 15 of each year.

**J.21 REPORT OF PHYSICAL INVENTORY OF CAPITAL EQUIPMENT (JAN 2000)**

Capital equipment is any piece of personal property, equipment, or furniture with a useful service life of 2 years or more and is acquired at a unit cost of \$25,000 or more. The suggested format for this report can be found in NETL's Property Handbook at <http://www.netl.doe.gov/business/index.html>. This report is due 2 years from award date and every 2 years thereafter.

**J.22 REPORT OF PHYSICAL INVENTORY OF SENSITIVE ITEMS (JAN 2000)**

Sensitive items are identified as small calculators, tape recorders, radios, photographic and projection equipment, typewriters and other office machines, firearms, survey instruments, binoculars, power tools, personal computers, printers, external modems, or other equipment, which because of its general use characteristics and ease of transport are particularly susceptible to misappropriation or theft. These items will usually have an acquisition cost of less than \$25,000. The suggested format for this report can be found in NETL's Property Handbook at <http://www.netl.doe.gov/business/index.html>. This report shall be submitted for the period ending September 30

and is due by October 15 of each year.

**J.23 REPORT OF TERMINATION OR COMPLETION INVENTORY (SF-1428 AND SF-120) (MAR 1999)**

This report submitted on the SF-1428 and SF-120 is due immediately upon completion or termination of the contract. The Contractor is required to perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract.

**J.24 SUBCONTRACT REPORTING (OCT 2001)**

With the exception of a small business, reports listed below are required to be submitted electronically by the prime Contractor for each contract containing a subcontracting plan. These electronic forms collect subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 of the Government share amount (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. Subcontract award data reported by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors.

**SUBCONTRACTING REPORT (SF294)**

Semi-annual Frequency  
Period End Dates: 3/31 and 9/30  
Due Dates: 4/30 and 10/30

Note: The first deliverable of this report is due whichever of the two dates is at least 60 calendar days after the award start date.

**SUMMARY SUBCONTRACTING REPORT (SF295)**

Annual Frequency  
Period End Date: 9/30  
Due Date: 10/30

Note: The first deliverable of this report is only required for the next period end date of 9/30, which is at least 60 calendar days after the award start date.

**SUBCONTRACT REPORTING SYSTEM (SRS)**

All subcontracting reports SF294's and SF295's must be submitted electronically. Access to the SRS can be made at <http://www1.pr.doe.gov/srs/>. All Contractors must register with the Headquarters SRS Systems Manager and use it to submit the required reports. When registering, the Contractor must provide a valid DUNS number. When registration is approved, the Contractor may use the system simply by logging in with his or her user name and password and transmit SF-294 and 295 data to the contracting office that requires the report. After review by the contracting office, the data will be forwarded via the Internet to DOE Headquarters. A comprehensive manual for the system may be found at <http://www1.pr.doe.gov/srs.wpd> (WordPerfect Version) or <http://www1.pr.doe.gov/srs.doc> (Word Version).

**J.25 STAFFING REPORT SUMMARY**

**PURPOSE**

The Staffing Report Summary is to provide NETL management with data relative to the number of Contractor FTEs (full time equivalents) charged to each funding source within a contract.

NETL uses this information in budgeting and planning exercises. Also many information requests are received

from Headquarters dealing with the location of Contractor employees. This report may be set-up so that the detail from the Invoice/Staffing Report will be automatically entered requiring little manual input.

#### **FORM**

An Adobe (.pdf) file has been included in Part III, Section J, Attachment B-1. This is the required format that must be utilized for submission of this report. An Excel version of the file has been posted to the electronic reading room for this solicitation under 2.0 Referenced Documents in SOW. This file may be downloaded from the following Internet site, during the solicitation phase of this procurement:  
<http://www.netl.doe.gov/business/solicit/ssc2003/index.html>

#### **INSTRUCTIONS**

- Item 1. Enter acronym of the contract title.
- Item 2. FTEs charged to B&Rs key to NETL's Intitutional Budget will be tracked separately. These B&R numbers will be predetermined on the format given to the Contractor. If changes occur the Contractor will be notified by E-mail with a new format. Enter the number of FTEs charged against the designated B&R.
- Item 3. Enter FTEs charged to other intuitional B&Rs which are not key to the budget. A footnote at the bottom of the form will designate the B&Rs within this category.
- Item 4. Enter the collective total of all FTEs charged to the remaining B&R s which are not reported in the Institutional Budget.
- Item5. Enter the total number of FTEs for each column.
- Item 6. Enter the FIE labor by site.

Off-site – any location not on one of NEIL's sites as defined in "on-site" below.

On-site – Federally-owned or leased property within the defined boundaries of the sites at Pittsburgh, PA; Morgantown, WV; Tulsa, OK; and Fairbanks, AK, including, in the case of Morgantown, NEIL-leased space in the Research Ridge complex immediately adjacent to the boundary.

- Item 7. Enter the total number of FTEs for each column.
- Item 8. Enter the headcount of employees working at on and off-site locations as defined in item 6 above.

#### **J.26 INVOICE DETAIL REPORT**

##### **PURPOSE**

The Invoice Detail Report provides a monthly status of actual and planned FTE hours worked for each task and headcount within a designated contract. This report will be used by Federal personnel as an information source and as a project management tool. This report will also serve as the base for the staffing report referenced in Section J Attachment B "Reporting Requirements Checklist". (Note: The Invoice Detail Report will also serve as supporting documentation for the "Public Voucher for Purchases and Services Other Than Personal" (SF 1034) as referenced in section G of the contract. Task managers will review the data as part of the invoice approval process.)

##### **FORM**

An Adobe (.pdf) file has been included in Part III, Section J, Attachment B-1. This is the required format that must be utilized for submission of this report. An Excel version of the file has been posted to the electronic reading room for this solicitation under 2.0 Referenced Documents in SOW. This file may be downloaded from the following Internet site, during the solicitation phase of this procurement:

<http://www.netl.doe.gov/business/solicit/ssc2003/index.html> .

## INSTRUCTIONS

- Item 1. Enter Contractor's name and address
- Item 2. Enter the contract number
- Item 3. Enter the name of and address of the organization for whom the services have been provided and is responsible for the payment of the invoice, as designated section G of the subject contract.
- Item 4. Enter a sequential invoice number as designated by the Contractor.
- Item 5. Enter the date the invoice was issued.
- Item 6. Enter the inclusive start and completion dates for the invoice period.
- Item 7. Enter the employee's name
- Item 8. Enter the labor category title and Exempt (E) or Nonexempt (NE)
- Item 9. Enter the employee status [full time (FT), part time (PT)]
- Item 10. Enter the employer name (prime Contractor, subcontractor)
- Item 11. Enter the employee's current labor rate.
- Item 12. Enter the actual hours worked in the reporting period by the employee. The available hours may vary by month depending on weekends, holidays, number of days in month, etc.
- Item 13. Enter the total labor per employee for the period.
- Item 14. Enter full time equivalent (FTE) actual time worked.
- Item 15. Enter the FTE labor by site.
  - Off-site – any location not on one of NEIL's sites as defined in "on-site" below.
  - On-site – Federally-owned or leased property within the defined boundaries of the sites at Pittsburgh, PA; Morgantown, WV; Tulsa, OK; and Fairbanks, AK, including, in the case of Morgantown, NETL-leased space in the Research Ridge complex immediately adjacent to the boundary.
- Item 16. Enter the cumulative hours worked to date per employee.
- Item 17. Enter the previous months costs (can be done by copying the values from "Cumulative Current Cost," column N on the spreadsheet). This column will be used to calculate the cumulative current cost column and can be hidden in subsequent invoices.
- Item 18. The cumulative current cost is the total cost from previous periods plus the cost for the current period.
- Item 19. Enter the task number and title.
- Item 20. Enter the total items of 12 through 18 described above.
- Item 21. Enter the planned/actual labor hours for the current period.

- Item 22. Enter the planned/actual labor hours for the cumulative period
- Item 23. Other direct costs (ODCs) include those cost other than labor which are directly related and charged to the task.
- Item 24. Enter a very brief description of the other direct costs.
- Item 25. Enter material costs for the period and cumulative to date.
- Item 26. Enter the travel costs for the period and cumulative to date.
- Item 27. Enter the training cost for the period and cumulative to date.
- Item 28. Enter fee awarded to the task.
- Item 29. Enter total of all costs and fee.
- Item 30. Enter the total cost and fee for labor and ODCs.
- Item 31. Enter the labors costs that were charged to each B&R funded to the task. Enter the total FTEs by budgeting and reporting (B&R) numbers at each site. This information is derived in combination with the Cost Management Report (CMR) by using the "total actual cost incurred for the reporting period" – Item 18 on the CMR - and prorating the costs according to the B&Rs and funding office (cost center) within each task and applying to the corresponding task, by site location, on the Staffing Report. Example: Task 60123 on the CMR is funded with AN2006000 and AW0301000 B&Rs from MD and MA (cost centers). When prorated, the task consists of 82% AN2006000 and 18% AW0301000 costs. The percentages would then be applied to Task 60123 FTEs on the Staffing Report.

## **J.27 CONTRACT ORGANIZATION CHART**

### **PURPOSE**

The Contract Organization Chart provides a detailed breakdown of the Contractor's FTE's for the NETL functional areas they are supporting. The data to be provided by the Contractor for each NETL functional area is labor category, name, location and FIE allotment. This report will be used by Federal personnel as an information source and as a project management tool.

### **FORM**

A Microsoft Power Point (.ppt) file has been included in Part III, Section J, Attachment B-2. This is the required format that must be utilized for submission of this report. This file has been posted to the electronic reading room for this solicitation under 2.0 Referenced Documents in SOW. This file may be downloaded from the following Internet site, during the solicitation phase of this procurement:  
<http://www.netl.doe.gov/business/solicit/ssc2003/index.html>.



**J.28 ATTACHMENT B-1 – COST MANAGEMENT/INVOICE DETAIL/SUMMARY STAFFING REPORT FORMS**

The Cost Management/Invoice Detail/Summary Staffing Report Forms are provided as a separate attachment entitled “41817-CMR-Staffing-Invoice.pdf”.

**J.29 ATTACHMENT B-2 – CONTRACT ORGANIZATION CHART**

The Contract Organization Chart Forms are provided as a separate attachment entitled “41817-Org-Chart.ppt”.

**J.30 ATTACHMENT C - PERFORMANCE EVALUATION PLAN**

**A. BACKGROUND**

1. This Performance Evaluation Plan covers the administration for the award fee provisions of Contract No. DE-AC26-04NT41817 for the National Energy Technology Laboratory and provides the standardization necessary to ensure effective development, administration, and coordination of the evaluation process. It is intended as a means to:
  - a. Document how performance during a specific award fee period will be evaluated and fee determined;
  - b. Assure that the Contractor's performance is objectively evaluated in a fair and consistent manner; and
  - c. Afford the Contractor an opportunity to earn fee commensurate with performance expended against performance objectives and expectations.
2. The following matters, among others, are covered in the contract:
  - a. Cost Plus Award Fee (CPAF) task orders will be employed to provide an incentive and to encourage and reward the Contractor for increasing efficiency in the performance of the contract.
  - b. The term of the contract is for 3 years, with one 2-year option period.
  - c. The estimated cost and total award fee pool will be established in accordance with clause H.16 of the contract.
  - d. The award fee earned will be determined by the process established in this plan and approved by the Fee Determination Official (FDO) in accordance with the terms and conditions of this contract.
  - e. The Government may unilaterally make changes to this plan.
  - f. Fee evaluation period will be in accordance with contract clause B.5, Distribution of Performance Award Fee."

**B. STRUCTURE FOR AWARD FEE ADMINISTRATION**

The following structure is established for administration of the award fee provisions of the contract.

1. Fee Determination Official (FDO)
  - a. The FDO is the Director of the National Energy Technology Laboratory (NETL) who is the Head of the Contracting Activity.
  - b. Primary responsibilities of the FDO include:
    - (1) Determining the Contractor's award fee earned for each evaluation period.
    - (2) Authorizing changes to this plan.
2. Performance Evaluation Board (PEB)
  - a. Chairman and Membership

Membership of the PEB will consist of the Chairman, the Contracting Officer, the Contracting Officer's Representative, and a representative from each of the primary organizations using this contract or their designee. The Government may change the membership without advance notice to the Contractor.

b. Performance Raters (PR)

Performance Raters will be responsible for evaluation and assessment of the Contractor's performance during the rating period and documenting results at the end of the evaluation period. The Performance Raters for Performance Area 1 will most often be the Task/Subtask Managers assigned to the individual task/subtask orders issued. The Performance Rater for Performance Area 2 will be appointed by the FDO and will most often be a senior level manager at NETL.

The Performance Raters will 1) coordinate with the necessary personnel to develop the performance score and supporting documentation; 2) recommend a score on overall effectiveness to the PEB for approval; and 3) meet with the Contractor to discuss and/or review progress on regularly scheduled basis during the evaluation period. The Government may change the performance raters without advance notice to the Contractor.

C. EVALUATION OF THE CONTRACTORS PERFORMANCE

1. Rating Plan

- a. The Contractor's performance will be evaluated and rated according to this Performance Evaluation Plan. The Performance Areas and Performance Area Weights and Award Fee Conversion Plan are attached as indicated below.

	<u>ITEM</u>	<u>EXHIBIT</u>
(1)	Performance Areas and Performance Area Weights	E-1
(2)	Award Fee Conversion Plan	E-2

- b. Exhibit E-2 is a basis for translating performance scores into an award fee for arriving at a recommendation for the FDO's consideration regarding the amount of award fee earned. In no way do they impute arithmetical precision or a requirement that the FDO accept this recommendation as a determination of the amount of award fee warranted for the Contractor's performance during an evaluation period.

2. Award Fee Determination Process

Presented below are process steps that will be followed to evaluate and determine the award fee due to the Contractor, based on performance.

- a. No later than twenty (20) calendar days after the end of each evaluation period, the Contractor shall submit a Performance Self-Assessment Report (against the performance objectives and measures) for each period under consideration. The self-assessment shall discuss major accomplishments or progress and discuss the Contractor's assessment of their weaknesses and areas requiring improvement. The self-assessment should not exceed two pages per task/subtask order.
- b. No later than thirty-five (35) calendar days after the end of each evaluation period, the Chairman of the PEB will present the draft evaluation findings to the Contractor. The

findings will be based on information generated from the Performance Raters of each task/subtask and the Performance Rater for Performance Area 2.

- c. The Contractor will be given an opportunity to submit comments to the PEB within five (5) calendar days after NETL's evaluation findings are presented.
- d. The report of findings, inclusive of any Contractor comments as well as the PEB's recommendations, will be provided to the FDO within ten (10) calendar days after the Contractor has submitted comments.
- e. Ten (10) calendar days after receipt of the PEB's report, the FDO provides written notification to the Contractor, the PEB Chairman, and the Contracting Officer of the final fee determination.
- f. The Contractor prepares a separate (i.e., apart from regular monthly invoice) voucher(s) based on the FDO's fee notice and submits to the Government for payment.
- g. The Government processes the Contractor's invoice(s) and the fee is paid.

**J.31 EXHIBIT E-1 -- PERFORMANCE AREAS AND PERFORMANCE AREA WEIGHTS**

The Performance Areas to be evaluated are identified below. Each Performance Area shall be evaluated using the described performance measures. The Performance Area Weights for each Performance Area are as indicated.

Performance Area Number	Performance Area Description	Performance Area Weight
1	Task Performance	75%
2	Management Performance	25%
	Total	100%

**A. PERFORMANCE AREA NO. 1 – TASK PERFORMANCE**

The performance requirements for the task orders shall be generated by the Government and entail the following elements:

Performance Objective – A statement of outcome or results expected for the work accomplished under the various Task/Subtask Orders which will be issued under the contract.

Performance Measures – The critical few characteristics or aspects to achieving the Performance Objective and used by the Government to evaluate the performance of the Contractor.

Performance Expectations – The targeted level or range of levels of performance for each Performance Measure.

Performance requirements will be established at the inception of each task order issued and may be adjusted through a bilateral change up to fifteen days prior to the beginning of an evaluation period. Task/Subtask Managers will develop performance objectives for the individual task orders issued and select the appropriate performance measures and corresponding performance expectations. The complete description of available performance measures, expectations and scores is presented in the following section. Task/Subtask Managers will also assign a weighting factor to each performance measure selected for the task order issued such that the total weight is 100%

**1. Evaluation and Scoring of Performance Area No. 1**

The evaluation process will start at the task and/or subtask level. At the end of the evaluation period, the task/subtask manager will evaluate the Contractor’s work within the task order according to the selected performance measures and the accompanying performance expectation levels.

The following table represents an exclusive list of performance measures, respective performance expectation levels, and performance scores available to determine whether or not the Contractor achieves the established performance objectives. Each task/subtask manager will select one or more performance measures and select weighting factors to be used to evaluate Contractor performance on the task order.

Performance Measure	Performance Measurement Definition	Performance Expectation Level	Performance Score
Quality of Work Products	DOE will assess the degree to which work products are accurate (i.e., free of typographical, grammatical, mathematical, and conceptual errors), complete and relevant with regard to DOE requests, professional in appearance and format, and accepted by DOE without revision.	Work products are (1) always accurate, complete, relevant, and professional, and are (2) always accepted without revision.	4 (Outstanding)
		Work products are (1) mostly accurate, complete, relevant, and professional, and are (2) mostly accepted without revision.	3 (Good)
		Work products are (1) usually accurate, complete, relevant, and professional, and are (2) usually accepted without significant revision being required.	2 (Satisfactory)
		Work products are (1) occasionally accurate, complete, relevant, and professional, and are (2) only occasionally accepted without significant revision being required.	1 (Marginal)
		Work products are (1) seldom accurate, complete, relevant, and professional, and are (2) seldom accepted without significant revision being required.	0 (Poor)
Quality of Work Processes	DOE will evaluate the degree to which the Contractor executes work processes in adherence to, and compliance with, prescribed procedures and requiring no intervention from the Government.	Work processes are (1) always executed according to prescribed procedures, and (2) require no intervention from the Government.	4 (Outstanding)
		Work processes are (1) mostly executed according to prescribed procedures, and (2) require minimal intervention from the Government.	3 (Good)
		Work processes are (1) usually executed with little variance from prescribed procedures, and (2) require little intervention from the Government.	2 (Satisfactory)
		Work processes are (1) occasionally executed with little variance from prescribed procedures, and (2) require some intervention from the Government.	1 (Marginal)
		Work processes are (1) seldom executed with little variance from prescribed procedures, and (2) require much intervention from the Government.	0 (Poor)
Productivity	DOE will assess the completion of tasks and the quantity of work performed with respect to that planned, expected, or assigned.	Tasks are always completed as assigned, and the quantity of work performed frequently exceeds that planned, expected, or assigned.	4 (Outstanding)
		Tasks are mostly completed as assigned, and the quantity of work performed occasionally exceeds that planned, expected, or assigned.	3 (Good)
		Tasks are usually completed as assigned, and the quantity of work performed infrequently exceeds that planned, expected or assigned.	2 (Satisfactory)

Performance Measure	Performance Measurement Definition	Performance Expectation Level	Performance Score
		Tasks are occasionally completed as assigned, and the quantity of work performed never exceeds that planned, expected or assigned.	1 (Marginal)
		Tasks are seldom completed as assigned, and the quantity of work performed never exceeds that planned, expected or assigned.	0 (Poor)
Schedule Control	DOE will assess the timeliness of deliverables, completion of milestones, and responsiveness to DOE requests, or range of schedule variance.	Milestones, deliverables and DOE requests are always completed on time, or schedule variance is always zero or a positive number.	4 (Outstanding)
		Milestones, deliverables and DOE requests are mostly completed on time, or schedule variance is mostly zero or mostly a positive number.	3 (Good)
		Milestones, deliverables and DOE requests are usually completed on time, or schedule variance is usually zero or usually a positive number.	2 (Satisfactory)
		Milestones, deliverables and DOE requests are occasionally completed on time, or schedule variance is occasionally zero or occasionally a positive number.	1 (Marginal)
		Milestones, deliverables and DOE requests are seldom completed on time, or schedule variance is seldom zero or occasionally a positive number.	0 (Poor)
Cost Control	DOE will assess adherence to budgets and accuracy of cost estimates, or range of cost variance.	Work is always performed under budget and costs are always accurately estimated; specific cost control measures have been widely demonstrated.	4 (Outstanding)
		Work is mostly within or under budget, costs are mostly accurately estimated, or cost variance is mostly a zero or mostly a positive number; specific cost control measures have been demonstrated.	3 (Good)
		Work is usually within or under budget, costs are usually accurately estimated, or cost variance is usually a zero or usually a positive number.	2 (Satisfactory)
		Work is occasionally within or under budget, costs are occasionally accurately estimated, or cost variance is occasionally a zero or occasionally a positive number.	1 (Marginal)
		Work is seldom within or under budget, costs are seldom accurately estimated, or cost variance is seldom a zero or seldom a positive number.	0 (Poor)



Performance Measure	Performance Measurement Definition	Performance Expectation Level	Performance Score
ES&H Compliance	DOE will assess the achievement of all of the ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics and Federal, state and local regulations, <u>and</u> initiatives for continuous improvement.	Applicable ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics and Federal, state and local regulations are always achieved <u>and</u> continuous improvement initiatives are usually achieved.	4 (Outstanding)
		Applicable ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics and Federal, state and local regulations are mostly achieved <u>and</u> continuous improvement initiatives are occasionally achieved.	3 (Good)
		Applicable ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics and Federal, state and local regulations are usually achieved.	2 (Satisfactory)
		Applicable ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics and Federal, state and local regulations are occasionally achieved.	1 (Marginal)
		Applicable ES&H requirements as outlined in ISM plans, NETL directives, NETL ES&H metrics and Federal, state and local regulations are seldom achieved.	0 (Poor)
Value Added	DOE will assess the Contractor for its ability to recommend and implement, if approved, innovative and creative approaches to performing work that result in significant benefits in quality, cost, timeliness, and productivity, and, when appropriate, significantly advances or augments NETL's scientific and technological capabilities.	The Contractor frequently recommends and implements innovative and creative approaches that have actual or potential significant benefits, and that significantly advance or augment NETL's scientific and technological capabilities.	4 (Outstanding)
		The Contractor occasionally recommends and implements innovative and creative approaches that have actual or potential significant benefits, and that significantly advance or augment NETL's scientific and technological capabilities.	3 (Good)
		The Contractor occasionally recommends and implements innovative and creative approaches that have actual or potential minor benefits, and that somewhat advance or augment NETL's scientific and technological capabilities.	2 (Satisfactory)
		The Contractor seldom recommends and implements innovative and creative approaches that have actual or potential minor benefits, and that somewhat advance or augment NETL's scientific and technological capabilities.	1 (Marginal)

Performance Measure	Performance Measurement Definition	Performance Expectation Level	Performance Score
		The Contractor never recommends and implements innovative and creative approaches that have actual or potential benefits, and that advance or augment NETL's scientific and technological capabilities.	0 (Poor)

All active or completed tasks during the evaluation period will be objectively evaluated. The Contractor's self assessment will be considered in the selection of the appropriate performance level and respective score for each measure. All scores above and below "satisfactory" will be properly documented. Performance scores will be compiled according to the weights assigned and a score will be generated for each task between 0 and 4.

For example: A Hydrogen Separation Support Task that includes four performance measures, quality of work product, cost control, schedule control and ES&H compliance with assigned weights of 50%, 20%, 20% and 10%, respectively, shall be calculated in the following manner.

Task: Hydrogen Separation Support			
Performance Measure	Assigned Weighting Factors	Performance Level Score	Weighted Score (Assigned Weight X Performance Level Score)
Quality of Work Products	50%	4	2.0
Cost Control	20%	3	0.6
Schedule Control	20%	3	0.6
ES&H Compliance	10%	4	0.4
<b>Task Performance Score</b>			<b>3.6</b>

All tasks will be evaluated in this similar manner.

## 2. Generation of Performance Area No. 1 Score

The task performance score will be between 0 and 4 and will be determined by aggregating individual task order scores which will be cost-weighted (based on planned costs for the evaluation period). The planned costs will be reviewed prior to the end of the evaluation period to determine if an adjustment is necessary.

The Performance Area No. 1 score will be determined by multiplying the Task Performance Score with its Performance Area Weight (i.e., 0.75).

## 3. Definitions

Always – on nearly every occasion or every time; nearly 100% (or in the 95-100% range)

Mostly – for the most part or almost entirely; approximately 90% (or in the 85-95% range)

Usually – such as is commonly, typically, or customarily encountered or experienced; approximately 80% (or in the 75-85% range)

Occasionally – from time to time, sometimes, irregularly; approximately 50% (or in the 25-75% range)

Seldom – not often, infrequently, rarely; approximately 15% (or in the 0-25% range)

**B.**

**PERFORMANCE AREA NO. 2 – MANAGEMENT PERFORMANCE**

**1. Evaluation and Scoring of Performance Area No. 2**

The evaluation of this performance measure will include many aspects of contract performance, including cost effectiveness. Management effectiveness will be evaluated by a senior responsible person appointed by the FDO. Task-related input will be provided by the COR. The objective of this performance area is to enhance Contractor performance of specific management functions which are identified in the evaluation factors and which are essential to effective and efficient management of the contract.

Performance Area No 2 shall be objectively evaluated based on the following factors:

- a. Cost Effectiveness – The demonstrated ability of the Contractor to develop and implement practices and processes resulting in cost efficiencies.
- b. Problem Resolution - The demonstrated ability of the Contractor to:
  - (1) identify potential problems in a timely manner; and
  - (2) promptly remedy, correct, or eliminate undesirable conditions that hinder effective and efficient performance.
- c. Coordination - The demonstrated ability of the Contractor to effectively coordinate on-site and off-site support of the Contractor, its principal subcontractors, and its vendors or lower tier subcontractors to accomplish all assigned objectives as authorized.
- d. Innovation - The Contractor's demonstrated innovation in recommending actions or plans for DOE approval which substantially increase the value of support services through cost reduction and/or improvement of results.
- e. Financial Reporting - The demonstrated ability to provide accurate and timely cost data, contractual reports, invoices, plans, and proposals per the contract's terms and conditions.
- f. Contract Notifications - The demonstrated ability of the Contractor to comply with the contract's term and conditions affecting contract cost (e.g., issuance of limitation of cost letters on a task and subtask basis, etc.).
- g. Manpower Management - The demonstrated ability of the Contractor to manage direct labor and other direct costs as identified in the task's or subtask's authorized plan.
- h. Environment, Safety, and Health (ES&H) - The Contractor's demonstrated compliance to contractually identified Federal, state, and local ES&H requirements.
- i. Integrated Safety Management (ISM) - The demonstrated ability of the Contractor to:
  - (1) Apply ISM's seven principles and five functions in the planning, budgeting, execution, and improvement of its management and work activities.
  - (2) Implement the requirements in their ISM plan.
  - (3) Implement the requirements of NETL's environmental management system (EMS).
- j. Socioeconomic - The demonstrated ability to achieve or exceed socioeconomic goals

identified in the DOE-approved Subcontracting Plan.

- k. Partnerships – The demonstrated ability to develop partnerships that complements, advances, or augments NETL’s scientific and technological capabilities. Partnership significance criteria will be described in the ordering document.

The Contractor shall be evaluated on the ability to provide objective evidence indicating the demonstration of the management quality factors listed above. The breadth and depth of demonstration will be primary factor evaluated. This performance measure will be scored from 0 to 4 as outlined below.

<u>Performance Measure</u>	<u>Performance Expectation Level</u>	<u>Performance Score*</u>
Quality of Contractor Management	Full demonstration (e.g., all factors demonstrated through objective evidence) of quality management factors, with particular attention to cost effectiveness demonstration.	4
	Widespread demonstration (e.g., high majority of factors objectively demonstrated) of quality management factors, including cost effectiveness.	3
	Good demonstration (e.g., majority of factors objectively demonstrated) of quality management factors.	2
	Fair demonstration (e.g., some of the factors objectively demonstrated) of quality management factors.	1
	Inconsistent and/or lacking demonstration of quality management factors.	0

\* Performance Scores for Performance Area No. 2 can be issued between performance scores (e.g., 3.5) based on the breadth and depth of objective evidence provided.

**2. Generation of Performance Area No. 2 Score**

The Performance Area No. 2 score will be determined by multiplying the Management Performance Score with its Performance Area Weight (i.e., 0.25)

**C. CALCULATION OF OVERALL PERFORMANCE SCORE**

The Overall Performance Score will be determined by adding the Performance Area No.1 score and the Performance Area No. 2 score.

**J.32 EXHIBIT E-2 – AWARD FEE CONVERSION PLAN**

The following chart device will be used in converting weighted performance points into percentages of available award fee. The Overall Performance Score will be rounded to the nearest tenth of point prior to conversion to Available Award Fee Percentage.

OVERALL PERFORMANCE NUMBER	AVAILABLE AWARD FEE PERCENTAGE
4.0	100.0
3.9	100.0
3.8	98.0
3.7	96.0
3.6	94.0
3.5	92.0
3.4	90.0
3.3	87.0
3.2	84.0
3.1	81.0
3.0	78.0
2.9	75.0
2.8	70.0
2.7	65.0
2.6	60.0
2.5	55.0
2.4	50.0
2.3	45.0
2.2	40.0
2.1	35.0
2.0	30.0
Below 2.0	0.0

**J.33 ATTACHMENT D - POSITION QUALIFICATIONS**

CATEGORY	DESCRIPTION
Engineer 1	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, safety, software), or related scientific/engineering field. Good communication and analytical skills.</p> <p>The Engineer 1 performs a variety of engineering assignments in one of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Generally serves as a member of a team supporting one of the areas described above.</p>
Engineer 2	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 3 years of job-related experience.</p> <p>The Engineer 2 performs a variety of engineering assignments in one or more of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Generally serves as a member of a team supporting one or more of the areas described above.</p>
Engineer 3	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 5 years of job-related experience, or a Master's degree.</p> <p>The Engineer 3 performs a variety of more complex engineering assignments in one or more of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. This level is intended for the experienced engineer capable of independently selecting and applying standard engineering techniques, procedures, and criteria.</p>
Engineer 4	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 8 years of job-related experience, or a Master's degree and 3 years of job-related experience, or a Ph.D. A Professional Engineer's license may substitute for 2 years of experience.</p> <p>The Engineer 4 performs as a lead on more complex engineering assignments. Performs a variety of life-cycle engineering assignments in one or more of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Requires the use of advanced techniques and the modification and extension of theories, precepts, and practices as necessary.</p>
Engineer 5	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 11 years of job-related experience, or a Master's degree and 6 years of job-related experience, or a Ph.D. and 3 years of job-related experience. A Professional Engineer's license may substitute for 2</p>

	<p>years of experience.</p> <p>The Engineer 5 performs as a lead on the most complex engineering assignments. Performs a variety of life-cycle engineering assignments in one or more of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Requires the use of advanced techniques and the modification and extension of theories, precepts, and practices as necessary.</p>
Engineer 6	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 15 years of job-related experience, or a Master's degree and 10 years of job-related experience, or a Ph.D. and 7 years of job-related experience. A Professional Engineer's license may substitute for 2 years of experience.</p> <p>The Engineer 6 performs as a lead on the most complex engineering assignments. Recognized as an expert by peers in specific engineering disciplines. Directs a variety of life-cycle assignments in one or more of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Requires the use of advanced techniques and the modification and extension of theories, precepts, and practices as necessary.</p>
Engineer 7	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 20 years of job-related experience, or a Masters Degree and 15 years of job-related experience, or a Ph.D. and 12 years of job-related experience. A Professional Engineer's license may substitute for 2 years of experience.</p> <p>The Engineer 7 performs as a lead on the most complex engineering assignments. Recognized as an expert by peers in specific engineering disciplines. Directs a variety of life-cycle engineering assignments in one or more of the following areas: research, development, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Assigned to technical projects that are considered to be at the forefront of their respective technology. Requires the use of advanced techniques and the modification and extension of theories, precepts, and practices as necessary.</p>
Engineer 8	<p>Bachelor's Degree in Engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, safety, software), or related scientific/engineering field. Good communication and analytical skills; working knowledge of computer systems and integrated software application programs. At least 25 years of job-related experience, or a Masters Degree and 20 years of job-related experience, or a Ph.D. and 17 years of job-related experience. A Professional Engineer's license may substitute for 2 years of experience.</p> <p>The Engineer 8 performs as a consultant and expert on the most complex engineering assignments and is nationally recognized as a preeminent researcher in specific engineering disciplines.</p>
Engineering Technician 1	<p>High School diploma/GED and no job-related experience or equivalent. Good communication and analytical skills.</p> <p>The Engineering Technician 1, under close supervision or using detailed procedures,</p>

	<p>performs simple or routine tasks or tests. Work is checked in progress or on completion. Duties will vary and will fall under general categories such as assembling or constructing simple or standard equipment; conducting simple or routine tests; gathering and maintaining specified records of engineering data such as tests, drawings, etc; performing computations by substituting numbers in specified formulas; plotting data and drawing simple curves and graphs.</p>
Engineering Technician 2	<p>Vocational/technical training beyond high school and at least 3 years of job-related experience or equivalent. Good communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Engineering Technician 2, under general supervision, performs non-routine tasks or tests of some complexity and variety within, but not necessarily limited to, a prescribed area of expertise. Selects or adapts standard procedures or equipment, using fully applicable precedents. Receives initial instructions, equipment requirements, and advice from supervisor as needed. Duties will vary and will fall under general categories such as assembling or constructing equipment; conducting a variety of tests using established methods; extracting engineering data from various prescribed but nonstandardized sources; processing the data following well-defined methods including elementary algebra and geometry; presenting the data in prescribed form.</p>
Engineering Technician 3	<p>Vocational/technical training beyond high school and at least 5 years of job-related experience or equivalent. Excellent communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Engineering Technician 3, under general supervision, performs non-routine tasks or tests of some complexity and variety within, but not necessarily limited to, a prescribed area of expertise. Selects or adapts standard procedures or equipment, using fully applicable precedents. Receives instructions, equipment requirements, and advice from supervisor as needed. Duties will vary and will fall under general categories such as assembling or constructing equipment; conducting a variety of tests which may require minor modifications or setups; extracting and compiling a variety of engineering data from lab/test rig notes, manuals, etc.; processes data, identifying errors or inconsistencies; selects methods of data presentation</p>
Engineering Technician 4	<p>Vocational/technical training beyond high school and at least 7 years of job-related experience or equivalent. Excellent communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Engineering Technician 4 performs non-routine assignments of substantial variety and complexity, where operational precedents may sometimes not exist. Such assignments, which are typically parts of broader assignments, are screened to eliminate unusual design problems. May also plan such assignments. Receives technical advice from supervisor; work is reviewed for technical adequacy or conformity with instructions. Duties will vary and will fall under general categories such as developing or reviewing designs of equipment; conducting tests or experiments requiring selection, adapting and modifying test equipment or test procedures; extracting and compiling a variety of engineering data from lab/test rig notes, manuals, etc.; processes data, identifying errors or inconsistencies; selects methods of data presentation</p>
Engineering Technician 5	<p>Vocational/technical training beyond high school and at least 10 years of job-related experience or equivalent. Excellent communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Engineering Technician 5 performs non-routine and complex assignments involving responsibility for planning and conducting a complete project of relatively limited scope or a portion of a larger and more diverse project. Selects and adapts plans, techniques, designs, or layouts. Contacts personnel in related activities to resolve problems and to</p>



	<p>coordinate the work; reviews, analyzes, and integrates the technical work of others. Supervisor outlines objectives, requirements, and technical approaches; completed work is reviewed for technical adequacy and satisfaction of requirements. May train and be assisted by lower level Engineering Technicians. Duties will vary and will fall under general categories such as designing, developing and constructing units, devices or equipment; conducting tests or experiments; analyzing results and redesigns or modifying equipment to improve performance; and reporting results.</p>
Engineering Specialist 1	<p>(1) Vocational/technical school diploma or associate's degree or (2) 4 years of job related experience. Good communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Engineering Specialist 1 performs specific technical/engineering support assignments in research, development, design, test installation, maintenance, modification and operation of diverse electronic/mechanical equipment and systems, including ADP systems, generally as a member of a technical support team.</p>
Engineering Specialist 2	<p>(1) Vocational/technical school diploma or associate's degree with at least 4 years of job related experience or (2) at least 8 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Engineering Specialist 2 performs a range of technical/engineering support assignments in research, development, design, test installation, maintenance, modification and operation of diverse electronic/mechanical equipment and systems, including ADP systems, generally as a member of a technical support team.</p>
Engineering Specialist 3	<p>(1) Vocational/technical school diploma or associate's degree with at least 8 years of job related experience or (2) at least 12 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Engineering Specialist 3 performs a range of technical/engineering support assignments in research, development, design, test installation, maintenance, modification and operation of diverse electronic/mechanical equipment and systems, including ADP systems, generally as a member of a technical support team on more complex assignments, or as a lead on less complex assignments.</p>
Engineering Specialist 4	<p>(1) Vocational/technical school diploma or associate's degree with at least 12 years of job related experience or (3) at least 16 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Engineering Specialist 4 performs a range of technical/engineering support assignments in research, development, design, test installation, maintenance, modification and operation of diverse electronic/mechanical equipment and systems, including ADP systems, generally as a lead on more complex assignments.</p>
Environmental, Safety and Health Specialist 1	<p>Bachelor's Degree in an ES&amp;H or ES&amp;H-related field (e.g., safety, environmental science, engineering, chemistry, biology or other sciences). No position-related experience. ES&amp;H-related experience may be substituted for educational requirements.</p> <p>The Environmental, Safety, and Health Specialist 1 performs specific environmental, safety, and health services, consultations, investigations, and analyses, and other directed assignments as either a member of a team or under close supervision of a more senior personnel.</p>

Environmental, Safety and Health Specialist 2	<p>Bachelor's Degree in an ES&amp;H or ES&amp;H-related field (e.g., safety, environmental science, engineering, chemistry, biology or other sciences). Three years of position-related experience. ES&amp;H-related experience may be substituted for educational requirements.</p> <p>The Environmental, Safety, and Health Specialist 2 performs general environmental, safety, and health services, consultations, investigations, and analyses, and other directed assignments as either a member of a team or under minimal supervision of a more senior personnel.</p>
Environmental, Safety and Health Specialist 3	<p>Bachelor's Degree in an ES&amp;H or ES&amp;H-related field (e.g., safety, environmental science, engineering, chemistry, biology or other sciences). Five years of position-related experience. ES&amp;H-related experience may be substituted for educational requirements.</p> <p>The Environmental, Safety, and Health Specialist 3 performs general environmental, safety, and health services, consultations, investigations, and analyses, and other directed assignments as either a member of a team or as an investigator.</p>
Environmental, Safety and Health Specialist 4	<p>Bachelor's Degree in an ES&amp;H or ES&amp;H-related field (e.g., safety, environmental science, engineering, chemistry, biology or other sciences). Seven years of position-related experience. ES&amp;H-related experience may be substituted for educational requirements.</p> <p>The Environmental, Safety, and Health Specialist 4 performs general environmental, safety, and health services, consultations, investigations, and analyses. Acts as lead investigator or project manager on primary ES&amp;H projects.</p>
Environmental, Safety and Health Specialist 5	<p>Bachelor's Degree in an ES&amp;H or ES&amp;H-related field (e.g., safety, environmental science, engineering, chemistry, biology or other sciences). Ten years of position-related experience.</p> <p>The Environmental, Safety, and Health Specialist 5 performs general environmental, safety, and health services, consultations, investigations, and analyses. Acts as lead investigator or project manager on primary ES&amp;H projects. Acts as liaison to on-site Government entities and other on-site Contractors.</p>
Environmental, Safety and Health Specialist 6	<p>Master's, Ph.D., or equivalent Degree in an ES&amp;H or ES&amp;H-related field (e.g., safety, environmental science, engineering, chemistry, biology or other sciences). Fifteen years of position-related experience.</p> <p>The Environmental, Safety, and Health Specialist 6 performs general environmental, safety, and health services, consultations, investigations, and analyses. Acts as lead investigator or program manager for ES&amp;H related matters for the Research Facility Operations contract. Acts as liaison to the Environmental, Safety, and Health Division and counterpart in the Site Operations and Program Support Services contract. Acts as a liaison to state and Federal agencies having jurisdictional oversight of environmental, safety, and health resources. Acts as Nationally-recognized expert in ES&amp;H disciplines.</p>
General Clerk 1	<p>Knowledge of High School commercial or general courses. Basic knowledge of computers and standard software applications. Up to 1 year of related work experience.</p> <p>The General Clerk 1 performs a variety of routine clerical duties within the area of assignment to provide administrative support, following established procedures and under general supervision. Operates computer using standard computer software.</p>
General Clerk 2	<p>Knowledge of High School commercial or general courses. Basic knowledge of computers and word processing software. Up to 2 years related work experience.</p> <p>The General Clerk 2 performs a variety of intermediate clerical duties to provide</p>


	<p>administrative support, following established procedures and under general supervision. Operates computer using standard computer software.</p>
General Clerk 3	<p>High School Diploma, with a commercial or general background. Basic knowledge of computers, standard software, and management databases. Experience in assigned area office procedures. Up to 4 years experience.</p> <p>The General Clerk 3 performs more advanced clerical and administrative duties by applying a thorough knowledge of office operations, the interrelationship with other departments, and a specific knowledge of a particular department. Works under supervision, within limits of accepted practice. May direct the work of others.</p>
General Clerk 4	<p>High School Diploma, with commercial or general background. Basic knowledge of computers, standard software, and management databases. Experience in assigned area office procedures. On-going courses periodically to keep abreast of new programs and equipment related to job responsibilities. More than 4 years experience.</p> <p>The General Clerk 4 uses subject-matter knowledge and judgment to complete assignments consisting of numerous steps that vary in nature and sequence. Selects from alternative methods and refers problems not solvable by adapting or interpreting substantive guides, manuals, or procedures. Works under minimal supervision. May direct the work of others.</p>
Industrial Hygienist 1	<p>Bachelor's degree in Industrial Hygiene and no job-related experience.</p> <p>The Industrial Hygienist 1 performs basic industrial hygiene assignments under close supervision and provides routine advice and assistance to customers.</p>
Industrial Hygienist 2	<p>Bachelor's degree in Industrial Hygiene and at least 3 years of position-related experience. Master's degree in Industrial Hygiene or certification by the American Board of Industrial Hygiene may be substituted for 2 years of experience.</p> <p>The Industrial Hygienist 2 performs a range of basic industrial hygiene assignments under minimal supervision and provides routine advice and assistance to customers.</p>
Industrial Hygienist 3	<p>Bachelor's degree in Industrial Hygiene and at least 5 years of position-related experience. Master's degree in Industrial Hygiene or certification by the American Board of Industrial Hygiene may be substituted for 2 years of experience.</p> <p>The Industrial Hygienist 3 performs a range of basic industrial hygiene assignments, acting as a lead on more complex assignments and provides routine advice and assistance to customers.</p>
Industrial Hygienist 4	<p>Bachelor's degree in Industrial Hygiene and at least 10 years of position-related experience. Master's degree in Industrial Hygiene or certification by the American Board of Industrial Hygiene may be substituted for 2 years of experience.</p> <p>The Industrial Hygienist 4 performs a range of advanced industrial hygiene assignments, requiring expert advice and utilizing knowledge of industrial hygiene principles to supervise program-level activities and resolve/address safety and health issues.</p>
Industrial Hygienist 5	<p>Bachelor's degree in Industrial Hygiene, certification by the American Board of Industrial Hygiene as an Industrial Hygienist, and 12 years of position-related experience. Master's degree in Industrial Hygiene may be substituted for 2 years of experience.</p> <p>The Industrial Hygienist 5 performs a range of advanced industrial hygiene assignments, requiring expert advice and utilizing knowledge of industrial hygiene principles to supervise program-level activities and resolve/address safety and health issues. Provides leadership for Safety and Health Programs.</p>

Program Management Support Specialist III	<p>High school diploma with at least 10 years experience in the management of administrative, computer database, and/or training systems.</p> <p>The Program Management Support Specialist III provides design and implementation support of educationally sound ES&amp;H computer-based training modules with assistance from subject matter experts (SME); administers computerized job hazard analysis systems; coordinates and schedules training logistics; maintains the integrity of training records for ES&amp;H- and security-related training courses; captures feedback and analyzes the effectiveness of ES&amp;H training provided; and provides status reports based upon the training records stored in the computer-based training database.</p>
Registered Nurse 2	<p>Graduation from an accredited School of Nursing; current registration and licensure in required state. Three years of position-related experience.</p> <p>The Registered Nurse 2 provides for and delivers health care services to workers and worker populations, requiring independent judgments, focusing on promotion, protection, and restoration of workers' health within the context of a safe and healthy work environment.</p>
Registered Nurse 2, Specialist	<p>Graduation from an accredited School of Nursing; current registration and licensure in required state; 6 years of position-related experience. Certification in CPR, audiometric testing, and successful completion of NIOSH-approved spirometry course required.</p> <p>The Registered Nurse 2, Specialist provides for and delivers health care services to workers and worker populations, requiring independent judgments, focusing on promotion, protection, and restoration of workers' health within the context of a safe and healthy work environment.</p>
Registered Nurse 3	<p>Bachelor's degree in Nursing from an accredited School of Nursing, current registration and licensure in required state; and 10 years of experience in hospital or outpatient setting, adult care practice. Minimum of 5 years of progressive management experience. Certification in CPR, audiometric testing and successful completion of NIOSH-approved spirometry course required. American Occupational Health Nurses (AOHN) certification preferred.</p> <p>The Registered Nurse 3 provides for and delivers health care services to workers and worker populations, requiring independent judgments, focusing on promotion, protection, and restoration of workers' health within the context of a safe and healthy work environment. Utilizes industrial hygiene and epidemiologic principles in predicting, analyzing, and preventing occupationally-related health effects.</p>
Registered Nurse 4	<p>Bachelor's degree in Nursing from an accredited School of Nursing, current registration and licensure in required state; and 15 years of experience in hospital or outpatient setting, adult care practice. Minimum of 10 years of progressive management experience. Certification in CPR, audiometric testing and successful completion of NIOSH-approved spirometry course required. American Occupational Health Nurses (AOHN) certification preferred.</p> <p>The Registered Nurse 4 provides for and delivers health care services to workers and worker populations, requiring independent judgments, focusing on promotion, protection, and restoration of workers' health within the context of a safe and healthy work environment. Utilizes industrial hygiene and epidemiologic principles in predicting, analyzing, and preventing occupationally-related health effects.</p>
Quality	(1) Vocational/technical school diploma or associate's degree or (2) 4 years of job related

Assurance/Control Specialist 1	<p>experience. Good communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Quality Assurance/Control Specialist 1 performs specific, non-technical support assignments, such as receipt inspections, purchasing reviews (to assess vendor compliance with specifications), record keeping, and the quality assurance/control aspects of document and directives control.</p>
Quality Assurance/Control Specialist 2	<p>(1) Vocational/technical school diploma or associate's degree, with at least 4 years of job related experience or (2) at least 8 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Quality Assurance/Control Specialist 2 performs both specific, non-technical support assignments, such as receipt inspections, purchasing reviews (to assess vendor compliance with specifications), record keeping, and the quality assurance/control aspects of document and directives control as well as more technical assignments, such as welding inspections, witnessing of piping inspections, and construction inspections (e.g., hydrostatic and pressure testing of piping and systems).</p>
Quality Assurance/Control Specialist 3	<p>(1) Vocational/technical school diploma or associate's degree, with at least 8 years of job related experience or (2) at least 12 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer systems and software application programs.</p> <p>The Quality Assurance/Control Specialist 3 performs the duties of a Quality Assurance/Control Specialist 2 as well as critical component inspections, witnessing, and evaluations. These critical components may operate under unusual, variable, and/or harsh conditions (e.g., high temperature and high pressure).</p>
Scientist 1	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics). Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Scientist 1 performs analytic or scientific studies. Generally functions in one of the following activities: development, research, analysis, planning, coordination, and technical assessment of projects.</p>
Scientist 2	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics) and 3 years of job-related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Scientist 2 performs analytic or scientific studies. Generally functions in one or more of the following activities: development, research, analysis, planning, coordination, and technical assessment of individual programs or several separate projects.</p>
Scientist 3	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics) and 5 years of job-related experience or a Master's degree. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Scientist 3 performs a variety of more complex analytic or scientific studies. Generally functions in one or more of the following activities: development, research, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. May perform as lead on less complex assignments. This level is intended for the experienced scientist capable of independently selecting and applying</p>

	methods, techniques, procedures, and criteria.
Scientist 4	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics) and 8 years of job-related experience, or a Master's degree and 3 years of job-related experience, or a Ph.D. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Scientist 4 performs as a lead on a variety of analytic or scientific studies. Generally functions in one or more of the following activities: conception, development, research, analysis, planning, coordination, and technical assessment of individual programs or several separate projects. Requires the use of advanced methods and the modification and extension of theories, precepts, and practices as necessary.</p>
Scientist 5	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics) or related science field and 11 years of job-related experience, or a Master's degree and 6 years of job-related experience, or a Ph.D. and 3 years of job-related experience. Excellent communication and analytical skills and a sound knowledge of computer system and software application programs.</p> <p>The Scientist 5 performs as a lead on the most complex analytic or scientific studies in physics, mathematics, chemistry, or engineering. Generally functions in one or more of the following activities: conception, development, research, analysis, planning, coordination, and technical assessment of major individual programs or several separate projects. Requires the use of advanced methods and the modification and extension of theories, precepts, and practices as necessary.</p>
Scientist 6	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics) and 15 years of job-related experience, or a Master's degree and 10 years of job-related experience, or Ph.D. and 7 years of job-related experience. Excellent communication and analytical skills and a sound knowledge of computer system and integrated software application programs.</p> <p>The Scientist 6 performs a lead on the most complex of analytic or scientific studies. Recognized as an expert by peers in specific scientific disciplines. Directs technical work in one or more of the following activities: conception, development, research, analysis, planning, coordination, and technical assessment of major individual programs or several separate projects. Requires the use of advanced methods and the modification and extension of theories, precepts, and practices as necessary.</p>
Scientist 7	<p>Bachelor's degree in a science or science-related field (e.g., biology, chemistry, economics, geology, mathematics, physics) and 20 years of job-related experience, or a Master's degree and 15 years of job-related experience, or Ph.D. and 12 years of job-related experience. Excellent communication and analytical skills and a sound knowledge of computer system and integrated software application programs. A highly specialized technical skill such as expertise in computational chemistry, analytical procedure development, or materials science.</p> <p>The Scientist 7 directs the most complex analytic or scientific studies and is routinely assigned to technical projects that are considered to be at the forefront of their respective technology. In addition to assignments in completing research and development programs, the Scientist 7 also provides fundamental input into the research program's direction and objectives.</p>
Scientist 8	Bachelor's degree in a science or science-related field (e.g., biology, chemistry,

	<p>economics, geology, mathematics, physics) and 25 years of job-related experience, or a Master's degree and 20 years of job-related experience, or Ph.D. and 17 years of job-related experience. Excellent communication and analytical skills and expert knowledge of computer system and integrated software application programs.</p> <p>The Scientist 8 performs as a consultant and expert on the most complex scientific assignments and is nationally recognized as a preeminent researcher in specific scientific disciplines.</p>
Secretary 1	<p>(1) Vocational/technical school diploma or associate's degree or (2) 4 years of job related experience. Good communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Secretary 1 performs specific, non-technical administrative support assignments such as program/project administration, records keeping, information management, finance, communications, and training, generally as a member of an administrative support team.</p>
Secretary 2	<p>(1) Vocational/technical school diploma or associate's degree with at least 4 years of job related experience or (2) at least 8 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Secretary 2 performs specific, non-technical administrative support assignments such as program/project administration, records keeping, information management, finance, communications, and training, generally as a member of a technical support team.</p>
Secretary 3	<p>(1) Vocational/technical school diploma or associate's degree with at least 8 years of job related experience or (2) at least 12 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Secretary 3 performs specific, non-technical administrative support assignments such as program/project administration, records keeping, information management, finance, communications, and training, generally as a member of a technical support team on more complex assignments, or as a lead on less complex assignments.</p>
Secretary 4	<p>(1) Vocational/technical school diploma or associate's degree with at least 12 years of job related experience or (2) at least 16 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Secretary 4 performs specific, non-technical administrative support assignments such as program/project administration, records keeping, information management, finance, communications, and training, generally as a lead on more complex assignments.</p>
Secretary 5	<p>(1) Vocational/technical school diploma or associate's degree with at least 16 years of job related experience or (2) at least 20 years of job related experience. Excellent communication and analytical skills and a working knowledge of computer system and software application programs.</p> <p>The Secretary 5 performs specific, non-technical administrative support assignments such as program/project administration, records keeping, information management, finance, communications, and training, generally as a lead on more complex assignments and functions with more independence.</p>
Senior Instructional Designer	<p>Master's of Science degree in computer science, instructional technologies, education or related field. At least 8 years of job-related experience required, including a working knowledge and experience with instructional systems design. Extensive working</p>

	<p>knowledge of software programs (especially those related to instructional design) required.</p> <p>The Senior Instructional Designer, utilizing an Instructional System Design (ISD) model, has primary responsibility in designing, developing and implementing both computer-based training and traditional stand-up based instruction on ES&amp;H topics according to the Code of Federal Regulations and internal DOE and NETL requirements.</p>
	



**J.34 ATTACHMENT E – WAGE DETERMINATIONS/COLLECTIVE BARGAINING AGREEMENTS**

The wage determinations and collective bargaining agreements are provided in a separate file attachment entitled "41817-WD-CBA.PDF"

**J.35 ATTACHMENT F – INCORPORATED SMALL BUSINESS SUBCONTRACTING PLAN**

The Contractor's proposed Small Business Subcontracting Plan is hereby incorporated into this contract and is provided in a separate file attachment entitled "41817 ATTACHMENT F"

**ATTACHMENT B-1**



NATIONAL ENERGY TECHNOLOGY LABORATORY  
COST MANAGEMENT REPORT

Title										Reporting Period										Projections									
Participant Name and Address										Cost Plan Date										Identification Number: DE-AM-23-04NT50500 Modification #:									
										Contract Start Date: 6/1/04										Contract Completion Date: 5/31/09									
										Contract Completion Date: 5/31/09																			
Task #	Task Title	B&R Number	*Cost Tracking			*Funding			Plan			Reporting Period			Accrued Costs			Cumulative to Date			Next Period			Funds			Notes		
			10 Fr. Plant Cost Center	11 Program/Order #	12 Current FY Obligations	13 Total Obligations	14 Approved FY Cost Plan	15 Total Plan Value	16 Actual	17 Plan	18 Actual	19 Bal of P	20 Actual	21 Plan	22 Next Period Commitments	23 FY Total Cost	24 Funds Expiration												
60123		AN2006000	PEMD122		-	195,000	124,591	208,750	7,896	7,899	73,256	12,688	170,485	182,025	8,100	107,505	09/15/03												
60123		AW0301000	PEMA422		-	95,000	59,188	98,250	3,751	3,801	34,878	15,425	81,010	86,480	3,732	51,072	09/30/03												
60123		AN2006000	PEMA422		55,000	231,290	141,871	235,450	8,991	9,108	81,484	27,428	194,085	207,284	9,582	122,419	09/15/03												
	Subtotal				55,000	521,290	325,650	540,450	20,639	20,908	189,618	55,541	445,580	475,789	21,414	280,996													
	Subtotal FE																												
	Subtotal NonFE																												
	28 Total																												
29 Figures Expressed in: Whole Dollars										30 Signature of Participant's Project Manager and Date										31 Signature of Participant's Authorized Financial Representative and Date									

\* Information provided by the government via contract modification

Staffing Report Summary  
Invoice/Staffing Data

<sup>1</sup> Participant Name and Address

<sup>3</sup>To: U.S. DOE - NETL  
P. O. Box 10940  
Pittsburgh PA, 15236

<sup>2</sup>Contract No.

<sup>4</sup>Reporting Period

FTE Staffing Summary <sup>5</sup> Contract	<sup>6</sup> AN	AA/AB/AC	AW	AZ	EW	WH	E**	Reimb & WFO	<sup>6</sup> Other***		<sup>6</sup> Non Inst	<sup>6</sup> Total FTEs
									Inst	Inst		
ABC	143.52	50.00	17.77	0.00	0.00	0.00	13.35	13.13	1.81	1.81	44.15	283.73
<sup>10</sup> MGN	65.00	15.00	10.00	0.00	0.00	0.00	4.20	3.73	0.07	0.07	40.00	138.00
PGH	62.00	20.00	7.77	0.00	0.00	0.00	4.13	6.82	0.00	0.00	2.41	103.13
Offsite	16.52	15.00		0.00	0.00	0.00	5.02	2.58	1.74	1.74	1.74	42.60
<sup>11</sup> TOTAL	143.52	50.00	17.77	0.00	0.00	0.00	13.35	13.13	1.81	1.81	44.15	283.73

<sup>12</sup> Headcount Staffing Summary	
MGN	152
PGH	148
Offsite	60
TOTAL	360

\*B&R designations as assigned according to FY budget requirements.

\*\* Includes EB, EC, ED, EL, ES

\*\*\* Includes AD, AE, SA

Invoice/Staffing Data  
 To: U.S. DOE - NETL  
 P. O. Box 10940  
 Pittsburgh PA, 15236  
 Invoice No.  
 Invoice Date:  
 Billing Period:

Participant Name and Address

Contract No.

Name	Labor Category (E/NE) or Description	Status	Employer	Current Rate	Hours Worked of Available	Current Period			Cumulative			
						Total Current Period	Total FTE hours	Labor by Site (Mgn, Pgh, Offsite)	Prev Costs	Hours	Current Cost	
<b>Task 60123, Administrative Support</b>												
Jones, Tom	Program Mgt Support Specialist (E)	FT	ABC, Inc.	32.16	160.00	5,145.60	1.00	1.00	460.00	15,179.52	20,325.12	
Lemon, Jason	Secretary 1 (NE)	FT	ABC, Inc.	25.65	160.00	4,104.00	1.00	1.00	460.00	12,106.80	16,210.80	
Page, Sharon	Word Processing Operator 1 (NE)	FT	ABC, Inc.	27.13	152.00	4,123.76	0.95	0.95	452.00	12,479.80	16,603.56	
Vernon, Greg	Word Processing Operator 1 (NE)	FT	ABC, Inc.	27.13	152.00	4,123.76	0.95	0.95	452.00	12,154.24	16,278.00	
Palm, Karen	Clerk 1 (NE)	PT	XYZ Co.	28.02	80.00	2,241.60	0.50	0.50	390.00	6,164.40	8,406.00	
<b>TOTAL TASK:</b>						704.00	19,738.72	4.40	1.00	2,204.00	58,084.76	77,823.48
<b>Planned/Actual Labor hours - Current 720/704</b>												
<b>Planned/Actual Labor hours - Cumulative 1440/1416</b>												
<b>Other Direct Costs (ODCs)</b>												
<b>Materials</b>						100.00				100.00	200.00	
<b>Travel</b>						200.00				500.00	700.00	
<b>Training</b>						300.00				300.00	600.00	
<b>Fee</b>						100.00				50.00	150.00	
<b>Total ODCs</b>						200.00				190.00		
<b>Total Cost &amp; Fee</b>						20,638.72				59,224.76	79,473.48	

Labor Summary by B&R

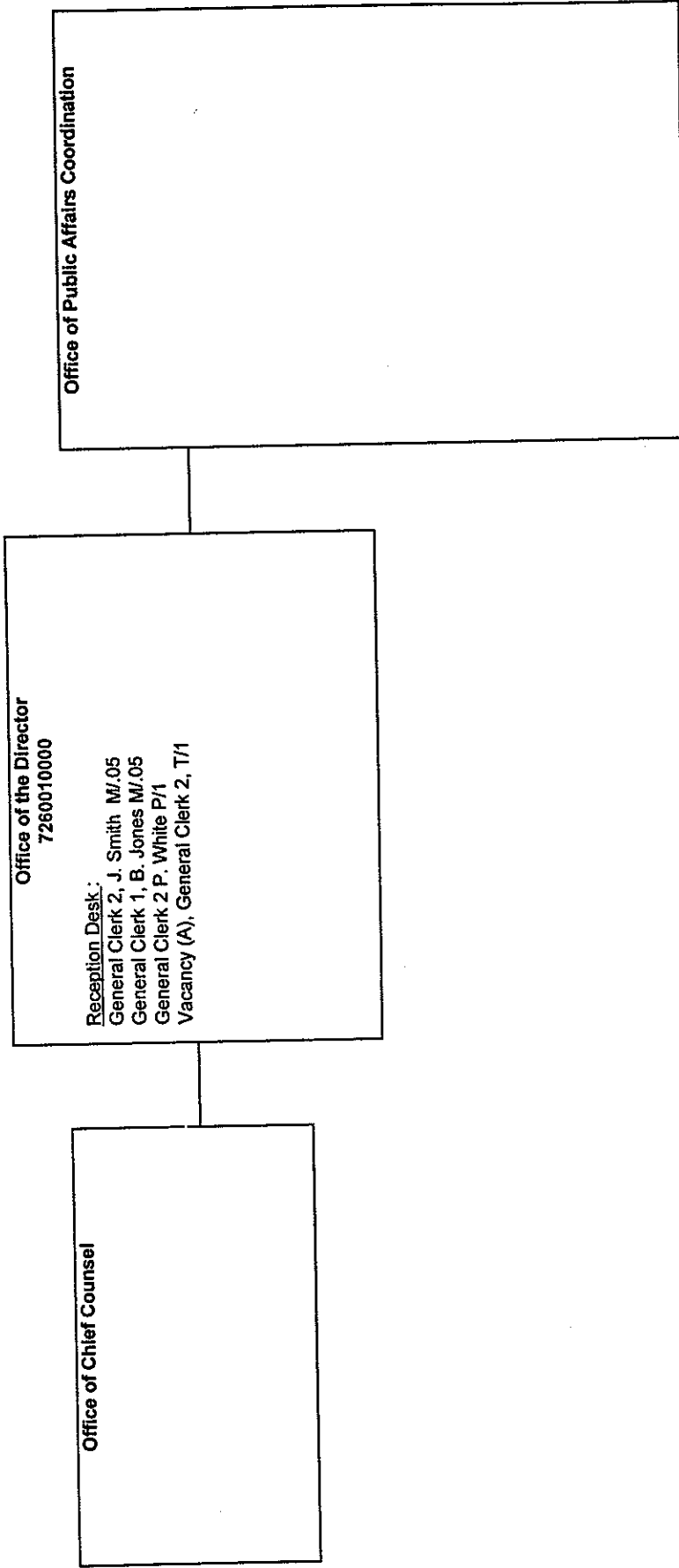
Task	B&R	FinPlan	Cost Ctr	Actual RP Cost	Mgn	Pgh	Offsite
60123	AN2006000	FT	D122	7,554	0.38	1.30	
60123	AW0301000	FT	A422	3,589	0.18	0.62	
60123	AN2006000	FT	A422	8,595	0.44	1.48	
Subtotal				19,739	1.00	3.40	



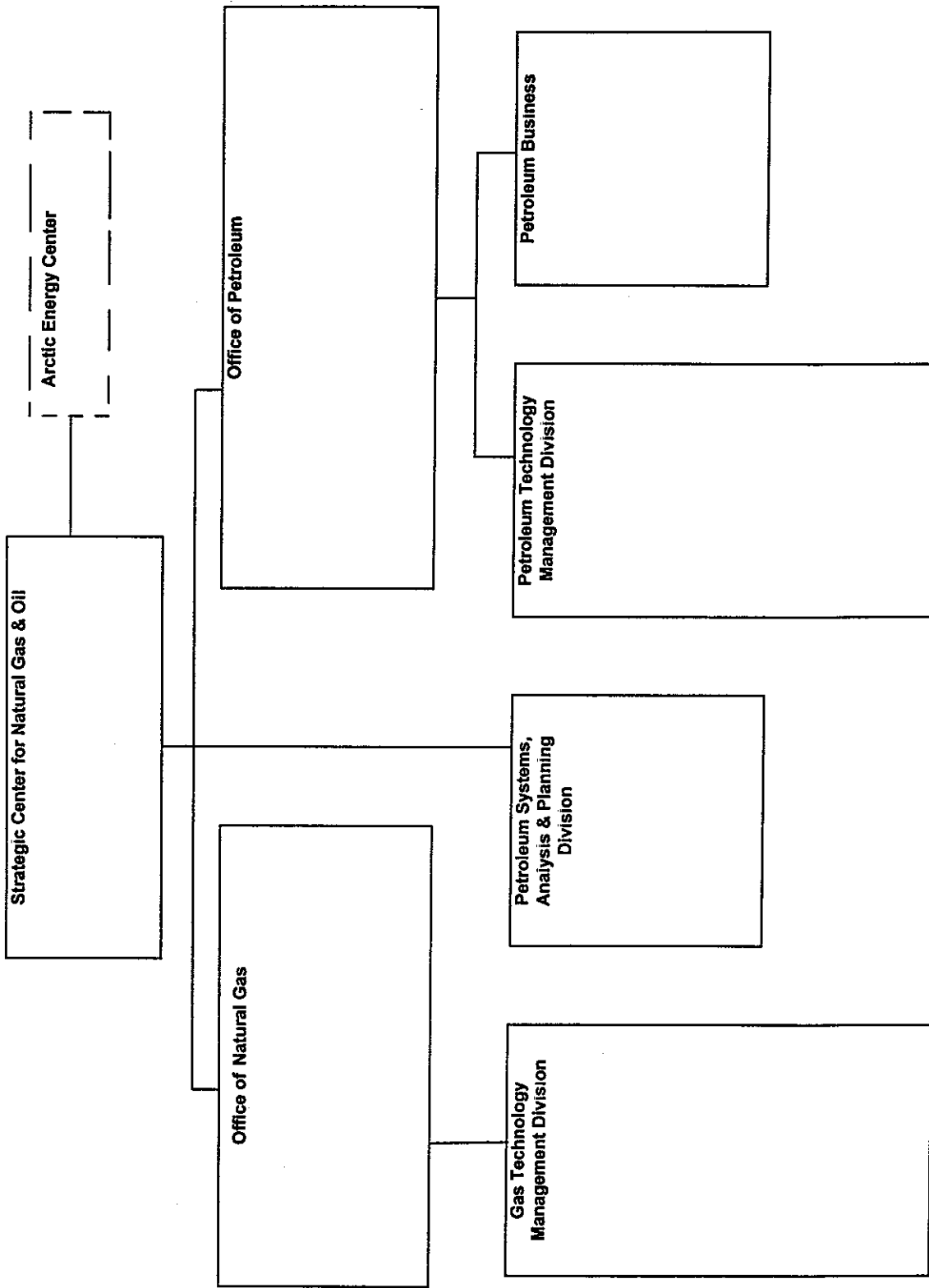


**ATTACHMENT B-2**

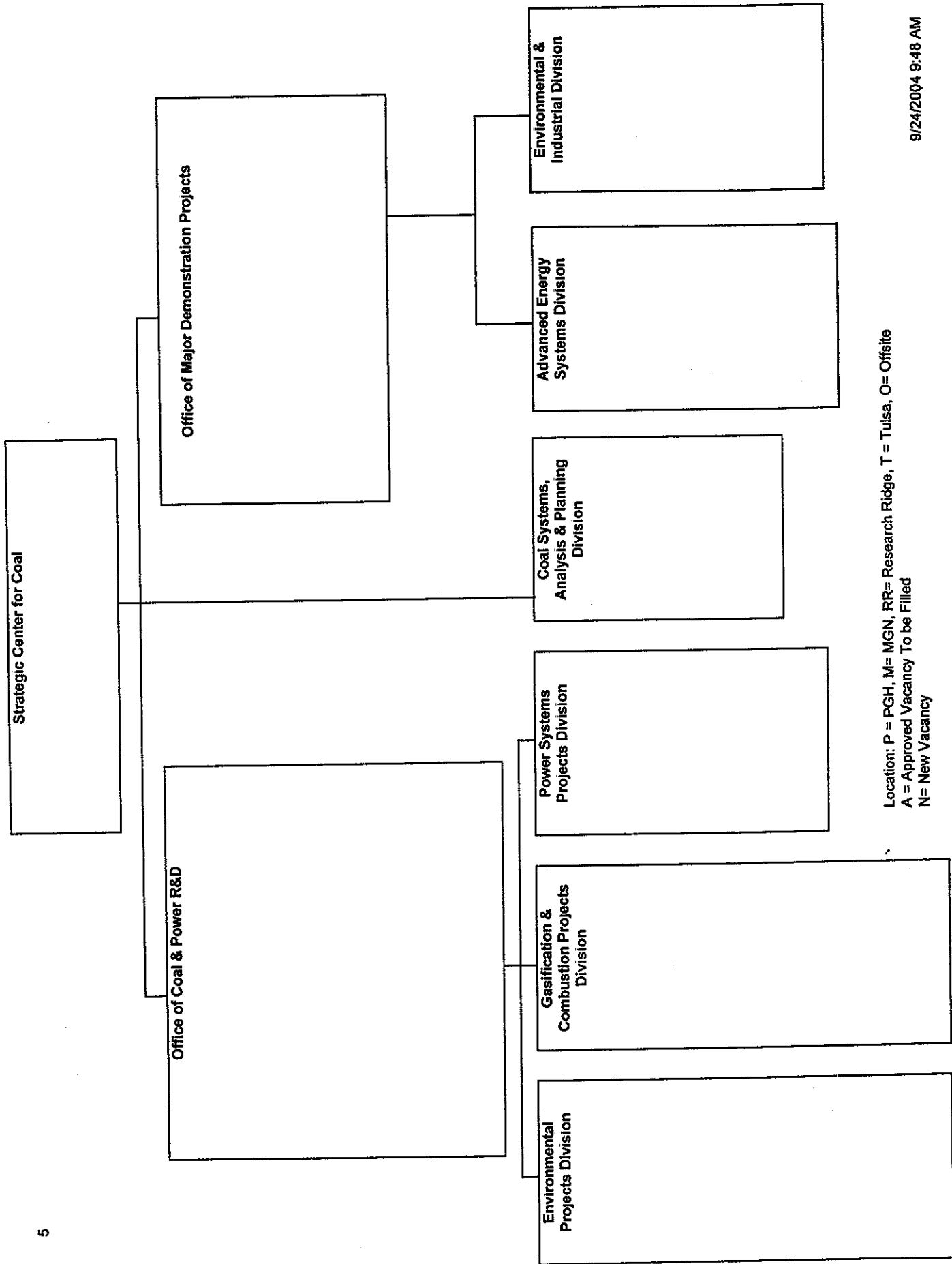




Location: P = PGH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
A = Approved Vacancy To be Filled  
N= New Vacancy

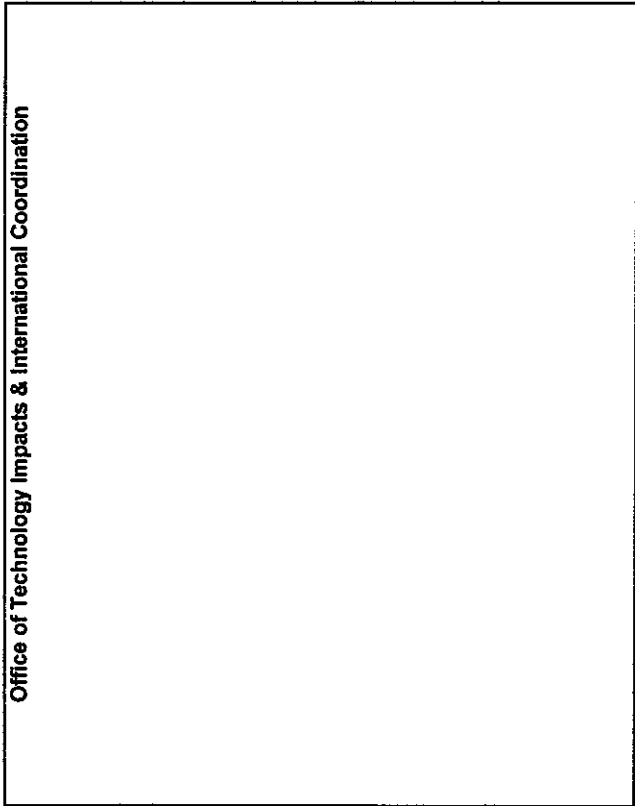


Location: P = PGH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
 A = Approved Vacancy To be Filled  
 N= New Vacancy

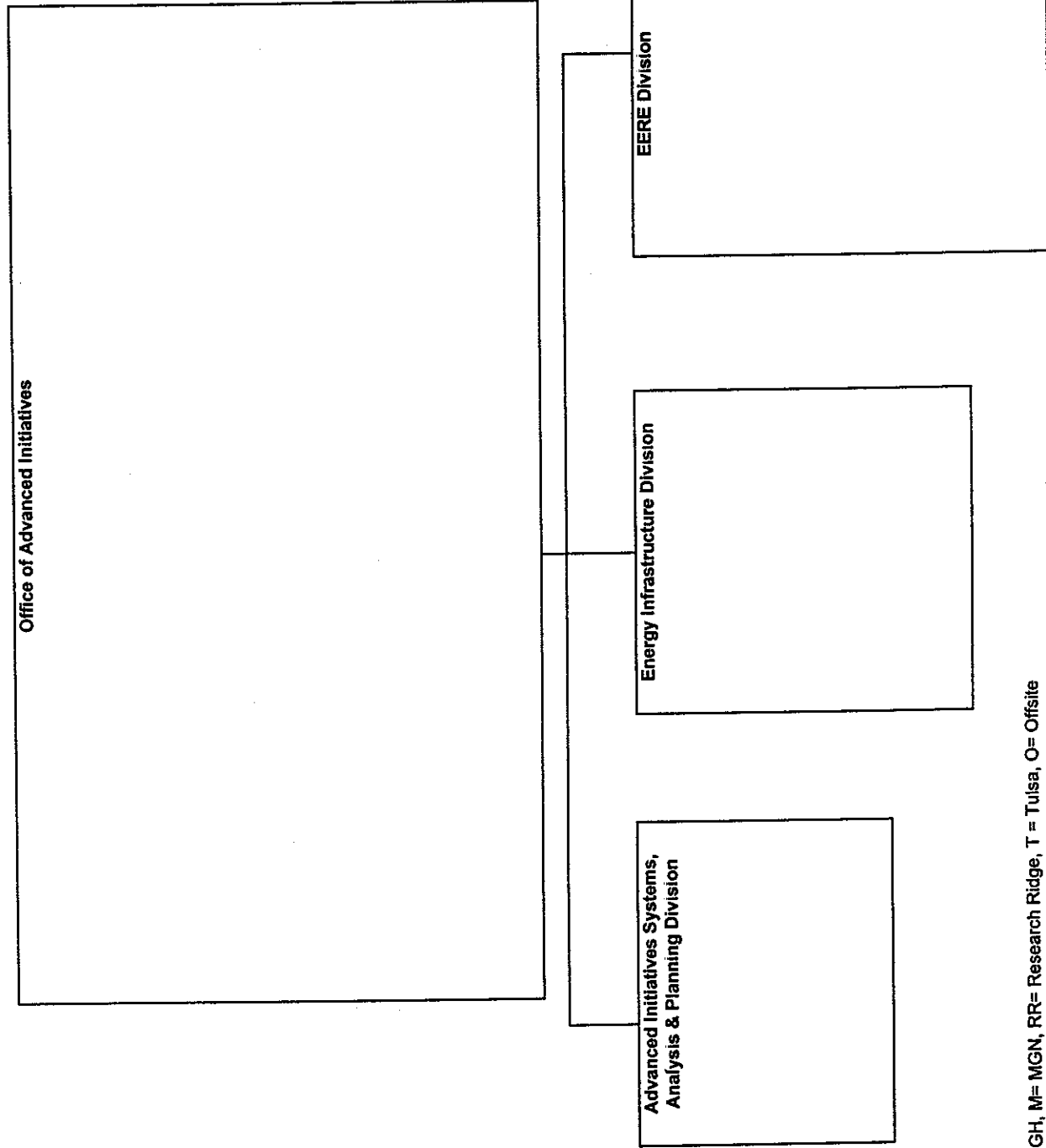


Location: P = PGH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
A = Approved Vacancy To be Filled  
N= New Vacancy

**Office of Technology Impacts & International Coordination**

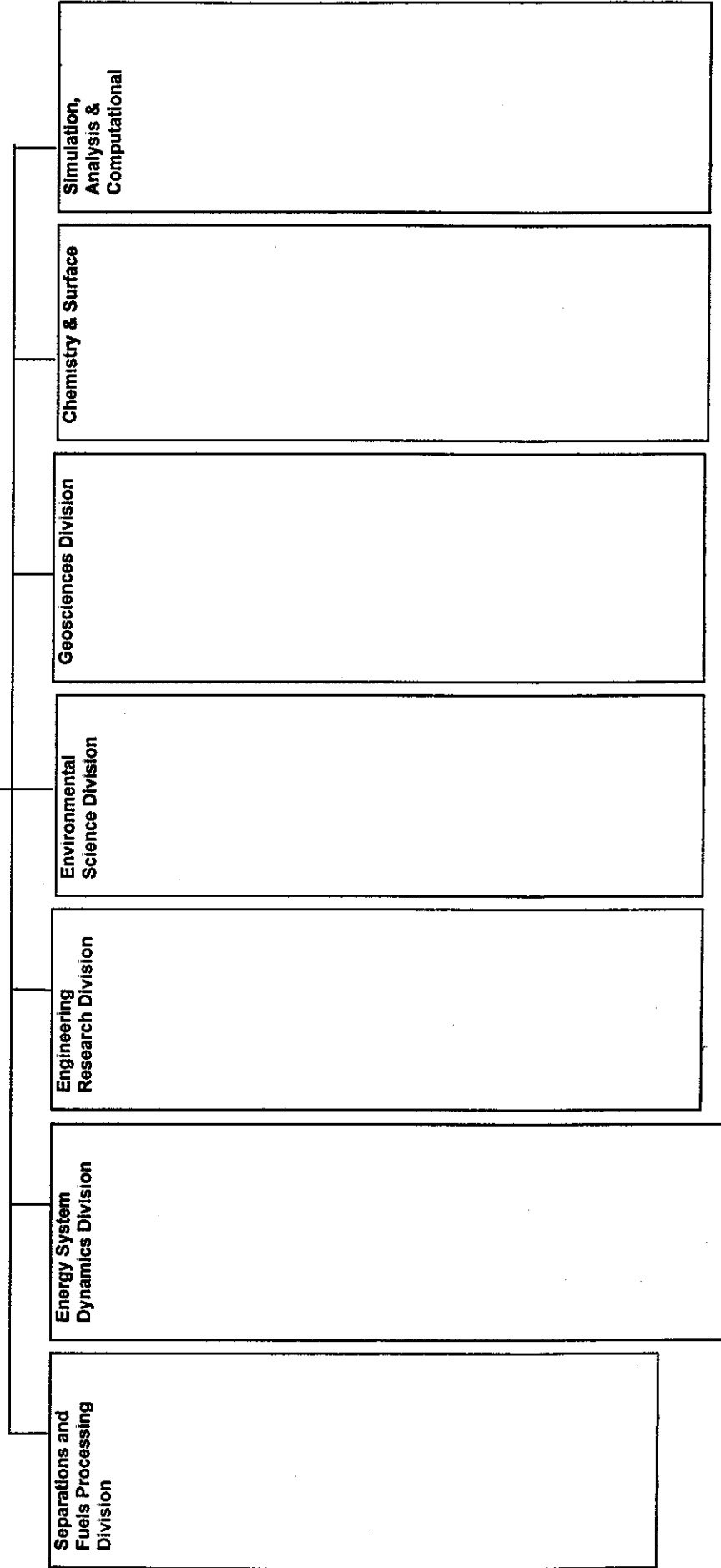


Location: P = PGH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
A = Approved Vacancy To be Filled  
N= New Vacancy



Location: P = PCH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
A = Approved Vacancy To be Filled  
N= New Vacancy

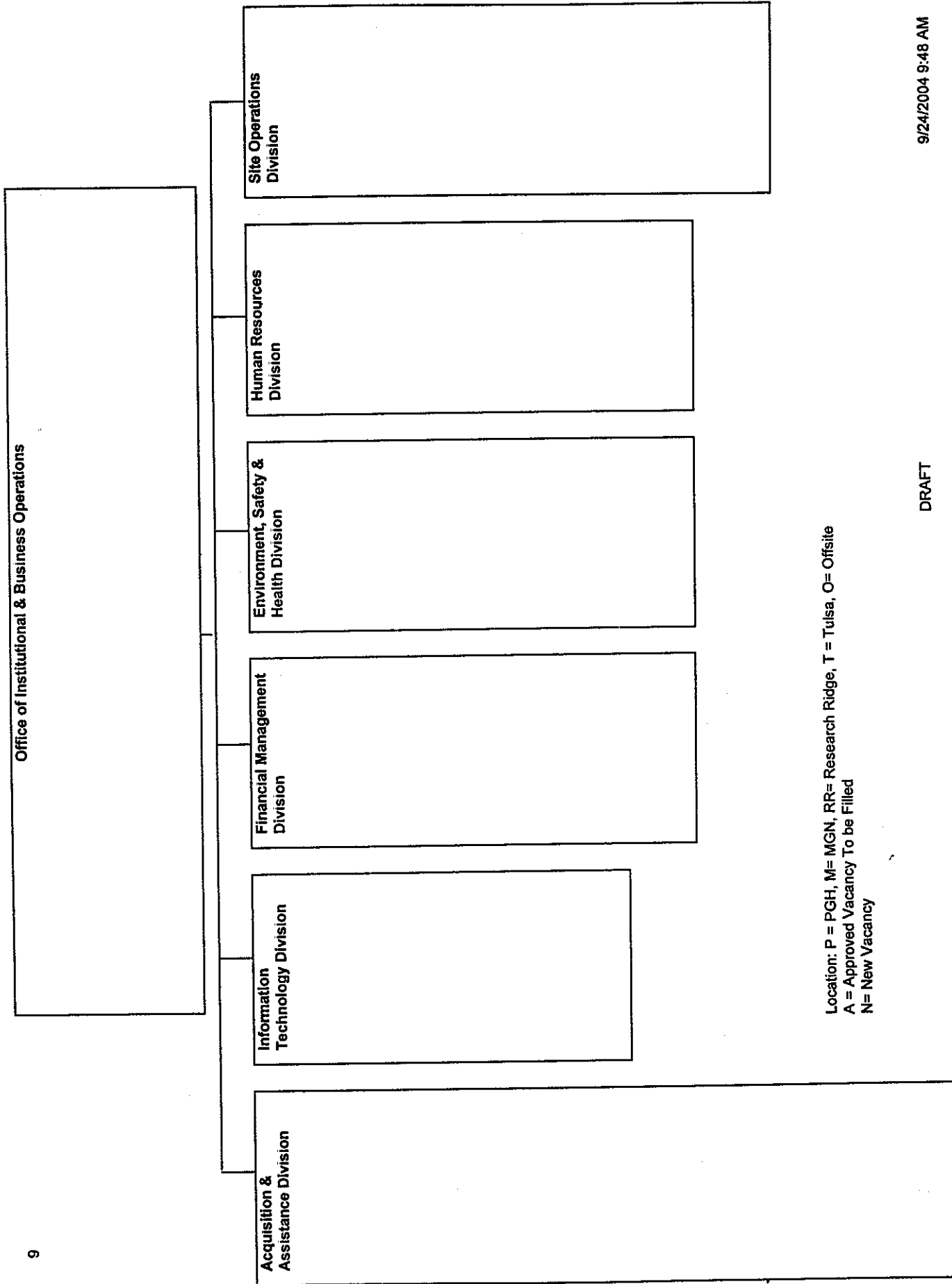
Office of Science, Technology and Analysis



Location: P = PGH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
A = Approved Vacancy To be Filled  
N= New Vacancy

9/24/2004 9:48 AM





Location: P = PGH, M= MGN, RR= Research Ridge, T = Tulsa, O= Offsite  
A = Approved Vacancy To be Filled  
N= New Vacancy



**ATTACHMENT E**



REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON, D.C. 20210

William W Gross  
Director

Division of Wage  
Determinations

Wage Determination No.: 1994-2451

Revision No.: 24

Date of Last Revision: 06/04/2003

States: Ohio, Pennsylvania

Area: Ohio Counties of Belmont, Harrison, Jefferson, Tuscarawas  
Pennsylvania Counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion,  
Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence,  
McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, Westmoreland

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

**OCCUPATION CODE - TITLE**

**MINIMUM WAGE RATE**

**01000 - Administrative Support and Clerical Occupations**

01011 - Accounting Clerk I	11 .00
01012 - Accounting Clerk II	12 .04
01013 - Accounting Clerk III	14 .97
01014 - Accounting Clerk IV	20 .33
01030 - Court Reporter	16 .16
01050 - Dispatcher, Motor Vehicle	13 .01
01060 - Document Preparation Clerk	11 .66
01070 - Messenger (Courier)	9 .61
01090 - Duplicating Machine Operator	10 .49
01110 - Film/Tape Librarian	12 .05
01115 - General Clerk I	8 .54
01116 - General Clerk II	9 .53
01117 - General Clerk III	11 .76
01118 - General Clerk IV	13 .35
01120 - Housing Referral Assistant	17 .32
01131 - Key Entry Operator I	9 .14
01132 - Key Entry Operator II	11 .13
01191 - Order Clerk I	11 .97
01192 - Order Clerk II	14 .31
01261 - Personnel Assistant (Employment) I	12 .42
01262 - Personnel Assistant (Employment) II	13 .84
01263 - Personnel Assistant (Employment) III	14 .49
01264 - Personnel Assistant (Employment) IV	17 .92
01270 - Production Control Clerk	16 .67

01290 - Rental Clerk	12 .05
01300 - Scheduler, Maintenance	13 .74
01311 - Secretary I	13 .74
01312 - Secretary II	15 .20
01313 - Secretary III	17 .32
01314 - Secretary IV	19 .23
01315 - Secretary V	21 .35
01320 - Service Order Dispatcher	13 .26
01341 - Stenographer I	12 .79
01342 - Stenographer II	14 .30
01400 - Supply Technician	19 .23
01420 - Survey Worker (Interviewer)	11 .51
01460 - Switchboard Operator-Receptionist	9 .80
01510 - Test Examiner	14 .23
01520 - Test Proctor	14 .23
01531 - Travel Clerk I	10 .17
01532 - Travel Clerk II	10 .90
01533 - Travel Clerk III	11 .71
01611 - Word Processor I	11 .61
01612 - Word Processor II	15 .43
01613 - Word Processor III	16 .54
 <b>03000 - Automatic Data Processing Occupations</b>	
03010 - Computer Data Librarian	12 .74
03041 - Computer Operator I	12 .74
03042 - Computer Operator II	13 .99
03043 - Computer Operator III	18 .29
03044 - Computer Operator IV	20 .32
03045 - Computer Operator V	22 .49
03071 - Computer Programmer I (1)	19 .92
03072 - Computer Programmer II (1)	22 .65
03073 - Computer Programmer III (1)	27 .18
03074 - Computer Programmer IV (1)	27 .62
03101 - Computer Systems Analyst I (1)	21 .53
03102 - Computer Systems Analyst II (1)	27 .48
03103 - Computer Systems Analyst III (1)	27 .62
03160 - Peripheral Equipment Operator	13 .96
 <b>05000 - Automotive Service Occupations</b>	
05005 - Automotive Body Repairer, Fiberglass	16 .80
05010 - Automotive Glass Installer	15 .60
05040 - Automotive Worker	15 .60
05070 - Electrician, Automotive	16 .22

05100 - Mobile Equipment Servicer	14 .46
05130 - Motor Equipment Metal Mechanic	16 .80
05160 - Motor Equipment Metal Worker	15 .60
05190 - Motor Vehicle Mechanic	17 .06
05220 - Motor Vehicle Mechanic Helper	13 .89
05250 - Motor Vehicle Upholstery Worker	15 .03
05280 - Motor Vehicle Wrecker	15 .60
05310 - Painter, Automotive	16 .22
05340 - Radiator Repair Specialist	15 .60
05370 - Tire Repairer	13 .96
05400 - Transmission Repair Specialist	16 .80
<b>07000 - Food Preparation and Service Occupations</b>	
(not set) - Food Service Worker	8 .61
07010 - Baker	10 .98
07041 - Cook I	10 .16
07042 - Cook II	10 .98
07070 - Dishwasher	8 .33
07130 - Meat Cutter	11 .08
07250 - Waiter/Waitress	8 .86
<b>09000 - Furniture Maintenance and Repair Occupations</b>	
09010 - Electrostatic Spray Painter	16 .22
09040 - Furniture Handler	12 .62
09070 - Furniture Refinisher	16 .22
09100 - Furniture Refinisher Helper	13 .89
09110 - Furniture Repairer, Minor	15 .03
09130 - Upholsterer	16 .22
<b>11030 - General Services and Support Occupations</b>	
11030 - Cleaner, Vehicles	8 .44
11060 - Elevator Operator	11 .02
11090 - Gardener	11 .01
11121 - House Keeping Aid I	9 .27
11122 - House Keeping Aid II	9 .94
11150 - Janitor	12 .12
11210 - Laborer, Grounds Maintenance	9 .60
11240 - Maid or Houseman	9 .27
11270 - Pest Controller	12 .21
11300 - Refuse Collector	12 .12
11330 - Tractor Operator	10 .60
11360 - Window Cleaner	12 .89

**12000 - Health Occupations**

12020 - Dental Assistant	10 .93
12040 - Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver	12 .02
12071 - Licensed Practical Nurse I	12 .06
12072 - Licensed Practical Nurse II	13 .55
12073 - Licensed Practical Nurse III	15 .15
12100 - Medical Assistant	10 .66
12130 - Medical Laboratory Technician	14 .22
12160 - Medical Record Clerk	11 .24
12190 - Medical Record Technician	13 .57
12221 - Nursing Assistant I	8 .03
12222 - Nursing Assistant II	9 .03
12223 - Nursing Assistant III	9 .85
12224 - Nursing Assistant IV	11 .05
12250 - Pharmacy Technician	12 .19
12280 - Phlebotomist	12 .93
12311 - Registered Nurse I	19 .83
12312 - Registered Nurse II	22 .11
12313 - Registered Nurse II, Specialist	22 .11
12314 - Registered Nurse III	27 .91
12315 - Registered Nurse III, Anesthetist	27 .94
12316 - Registered Nurse IV	29 .41

**13000 - Information and Arts Occupations**

13002 - Audiovisual Librarian	16 .81
13011 - Exhibits Specialist I	20 .46
13012 - Exhibits Specialist II	26 .07
13013 - Exhibits Specialist III	28 .16
13041 - Illustrator I	17 .66
13042 - Illustrator II	22 .51
13043 - Illustrator III	24 .32
13047 - Librarian	24 .58
13050 - Library Technician	13 .89
13071 - Photographer I	13 .80
13072 - Photographer II	16 .58
13073 - Photographer III	21 .13
13074 - Photographer IV	22 .83
13075 - Photographer V	27 .60

**15000 - Laundry, Dry Cleaning, Pressing and Related Occupations**

15010 - Assembler	8 .25
15030 - Counter Attendant	8 .25
15040 - Dry Cleaner	10 .11



15070 - Finisher, Flatwork, Machine	8 .25
15090 - Presser, Hand	8 .25
15100 - Presser, Machine, Drycleaning	8 .25
15130 - Presser, Machine, Shirts	8 .25
15160 - Presser, Machine, Wearing Apparel, Laundry	8 .25
15190 - Sewing Machine Operator	10 .80
15220 - Tailor	11 .48
15250 - Washer, Machine	8 .94
<b>19000 - Machine Tool Operation and Repair Occupations</b>	
19010 - Machine-Tool Operator (Toolroom)	16 .21
19040 - Tool and Die Maker	22 .76
<b>21000 - Material Handling and Packing Occupations</b>	
21010 - Fuel Distribution System Operator	16 .62
21020 - Material Coordinator	16 .89
21030 - Material Expediter	16 .89
21040 - Material Handling Laborer	16 .45
21050 - Order Filler	13 .89
21071 - Forklift Operator	13 .92
21080 - Production Line Worker (Food Processing)	14 .60
21100 - Shipping/Receiving Clerk	13 .72
21130 - Shipping Packer	13 .72
21140 - Store Worker I	11 .08
21150 - Stock Clerk (Shelf Stocker; Store Worker II)	14 .06
21210 - Tools and Parts Attendant	13 .61
21400 - Warehouse Specialist	13 .92
<b>23000 - Mechanics and Maintenance and Repair Occupations</b>	
23010 - Aircraft Mechanic	18 .71
23040 - Aircraft Mechanic Helper	14 .78
23050 - Aircraft Quality Control Inspector	19 .32
23060 - Aircraft Servicer	16 .37
23070 - Aircraft Worker	17 .25
23100 - Appliance Mechanic	16 .73
23120 - Bicycle Repairer	13 .96
23125 - Cable Splicer	21 .69
23130 - Carpenter, Maintenance	17 .47
23140 - Carpet Layer	17 .94
23160 - Electrician, Maintenance	20 .74
23181 - Electronics Technician, Maintenance I	18 .40
23182 - Electronics Technician, Maintenance II	21 .70
23183 - Electronics Technician, Maintenance III	23 .74

23260 - Fabric Worker	15 .03
23290 - Fire Alarm System Mechanic	17 .58
23310 - Fire Extinguisher Repairer	15 .55
23340 - Fuel Distribution System Mechanic	19 .32
23370 - General Maintenance Worker	15 .60
23400 - Heating, Refrigeration and Air Conditioning Mechanic	17 .24
23430 - Heavy Equipment Mechanic	16 .97
23440 - Heavy Equipment Operator	18 .48
23460 - Instrument Mechanic	19 .10
23470 - Laborer	13 .37
23500 - Locksmith	18 .41
23530 - Machinery Maintenance Mechanic	18 .66
23550 - Machinist, Maintenance	18 .41
23580 - Maintenance Trades Helper	13 .89
23640 - Millwright	18 .76
23700 - Office Appliance Repairer	18 .41
23740 - Painter, Aircraft	17 .26
23760 - Painter, Maintenance	18 .40
23790 - Pipefitter, Maintenance	22 .74
23800 - Plumber, Maintenance	18 .65
23820 - Pneudraulic Systems Mechanic	19 .10
23850 - Rigger	19 .10
23870 - Scale Mechanic	17 .48
23890 - Sheet-Metal Worker, Maintenance	18 .88
23910 - Small Engine Mechanic	15 .60
23930 - Telecommunication Mechanic I	17 .36
23931 - Telecommunication Mechanic II	17 .83
23950 - Telephone Lineman	17 .58
23960 - Welder, Combination, Maintenance	16 .81
23965 - Well Driller	16 .80
23970 - Woodcraft Worker	16 .80
23980 - Woodworker	14 .45
<b>24000 - Personal Needs Occupations</b>	
24570 - Child Care Attendant	9 .40
24580 - Child Care Center Clerk	8 .86
24600 - Chore Aid	8 .92
24630 - Homemaker	10 .89
<b>25000 - Plant and System Operation Occupations</b>	
25010 - Boiler Tender	20 .78
25040 - Sewage Plant Operator	18 .37
25070 - Stationary Engineer	20 .78

25190 - Ventilation Equipment Tender	15 28
25210 - Water Treatment Plant Operator	17 84
<b>27000 - Protective Service Occupations</b>	
(not set) - Police Officer	22 56
27004 - Alarm Monitor	13 53
27006 - Corrections Officer	19 31
27010 - Court Security Officer	19 98
27040 - Detention Officer	19 31
27070 - Firefighter	19 87
27101 - Guard I	8 48
27102 - Guard II	13 74
<b>28000 - Stevedoring/Longshoremen Occupations</b>	
28010 - Blocker and Bracer	16 21
28020 - Hatch Tender	16 21
28030 - Line Handler	16 21
28040 - Stevedore I	15 30
28050 - Stevedore II	16 52
<b>29000 - Technical Occupations</b>	
21150 - Graphic Artist	18 69
29010 - Air Traffic Control Specialist, Center (2)	29 33
29011 - Air Traffic Control Specialist, Station (2)	20 22
29012 - Air Traffic Control Specialist, Terminal (2)	22 27
29023 - Archeological Technician I	14 84
29024 - Archeological Technician II	16 62
29025 - Archeological Technician III	20 55
29030 - Cartographic Technician	22 35
29035 - Computer Based Training (CBT) Specialist/ Instructor	24 32
29040 - Civil Engineering Technician	20 74
29061 - Drafter I	12 82
29062 - Drafter II	16 27
29063 - Drafter III	19 55
29064 - Drafter IV	25 09
29081 - Engineering Technician I	16 06
29082 - Engineering Technician II	18 06
29083 - Engineering Technician III	20 98
29084 - Engineering Technician IV	24 00
29085 - Engineering Technician V	27 48
29086 - Engineering Technician VI	33 22
29090 - Environmental Technician	17 43
29100 - Flight Simulator/Instructor (Pilot)	27 48

29160 - Instructor	22 .54
29210 - Laboratory Technician	18 .37
29240 - Mathematical Technician	25 .09
29361 - Paralegal/Legal Assistant I	14 .45
29362 - Paralegal/Legal Assistant II	18 .81
29363 - Paralegal/Legal Assistant III	22 .27
29364 - Paralegal/Legal Assistant IV	22 .93
29390 - Photooptics Technician	22 .06
29480 - Technical Writer	21 .39
29491 - Unexploded Ordnance (UXO) Technician I	18 .64
29492 - Unexploded Ordnance (UXO) Technician II	22 .55
29493 - Unexploded Ordnance (UXO) Technician III	27 .03
29494 - Unexploded (UXO) Safety Escort	18 .64
29495 - Unexploded (UXO) Sweep Personnel	18 .64
29620 - Weather Observer, Senior (3)	21 .00
29621 - Weather Observer, Combined Upper Air and Surface Programs (3)	20 .06
29622 - Weather Observer, Upper Air (3)	20 .06
 <b>31000 - Transportation/ Mobile Equipment Operation Occupations</b>	
31030 - Bus Driver	17 .12
31260 - Parking and Lot Attendant	9 .00
31290 - Shuttle Bus Driver	14 .50
31300 - Taxi Driver	9 .93
31361 - Truckdriver, Light Truck	13 .63
31362 - Truckdriver, Medium Truck	15 .88
31363 - Truckdriver, Heavy Truck	16 .28
31364 - Truckdriver, Tractor-Trailer	16 .61
 <b>99000 - Miscellaneous Occupations</b>	
99020 - Animal Caretaker	9 .38
99030 - Cashier	7 .45
99041 - Carnival Equipment Operator	9 .78
99042 - Carnival Equipment Repairer	10 .16
99043 - Carnival Worker	8 .33
99050 - Desk Clerk	7 .70
99095 - Embalmer	18 .64
99300 - Lifeguard	8 .91
99310 - Mortician	19 .44
99350 - Park Attendant (Aide)	11 .19
99400 - Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	8 .91
99500 - Recreation Specialist	12 .61
99510 - Recycling Worker	14 .23
99610 - Sales Clerk	8 .87

99620 - School Crossing Guard (Crosswalk Attendant)	8 .33
99630 - Sport Official	7 .74
99658 - Survey Party Chief (Chief of Party)	14 .32
99659 - Surveying Technician (Instr. Person/Surveyor Asst./Instr.)	13 .01
99660 - Surveying Aide	8 .53
99690 - Swimming Pool Operator	15 .10
99720 - Vending Machine Attendant	13 .41
99730 - Vending Machine Repairer	15 .10
99740 - Vending Machine Repairer Helper	13 .41

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ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$2.36 an hour or \$94.40 a week or \$409.07 a month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 8 years, 4 weeks after 15 years, and 5 weeks after 25 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. at the rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay.
- 3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than

small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**\*\* NOTES APPLYING TO THIS WAGE DETERMINATION \*\***

**Source of Occupational Title and Descriptions:**

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by the Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

**REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}**

**Conformance Process:**

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's

recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).

- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON, D.C. 20210

William W. Gross            Division of Wage  
Director                      Determinations

Wage Determination No.: 1994-2573  
Revision No.: 20  
Date of Last Revision: 05/30/2003

States: Kentucky, Ohio, West Virginia

Area: Kentucky Counties of Boyd, Carter, Elliott, Floyd, Greenup, Johnson, Lawrence, Lewis, Magoffin, Martin, Pike  
Ohio Counties of Monroe, Morgan, Noble, Washington  
West Virginia - All Counties except : Berkeley, Jefferson

Note: West Virginia include all counties except Berkeley and Jefferson counties.

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
<b>01000 - Administrative Support and Clerical Occupations</b>	
01011 - Accounting Clerk I	8 21
01012 - Accounting Clerk II	10 37
01013 - Accounting Clerk III	18 04
01014 - Accounting Clerk IV	20 19
01030 - Court Reporter	16 96
01050 - Dispatcher, Motor Vehicle	14 02
01060 - Document Preparation Clerk	11 14
01070 - Messenger (Courier)	7 53
01090 - Duplicating Machine Operator	11 19
01110 - Film/Tape Librarian	11 99
01115 - General Clerk I	8 54
01116 - General Clerk II	9 60
01117 - General Clerk III	12 02
01118 - General Clerk IV	13 50
01120 - Housing Referral Assistant	14 85
01131 - Key Entry Operator I	8 28
01132 - Key Entry Operator II	12 18
01191 - Order Clerk I	7 94
01192 - Order Clerk II	9 53
01261 - Personnel Assistant (Employment) I	10 98
01262 - Personnel Assistant (Employment) II	12 32
01263 - Personnel Assistant (Employment) III	15 43
01264 - Personnel Assistant (Employment) IV	17 34



01270 - Production Control Clerk	15 .63
01290 - Rental Clerk	11 .99
01300 - Scheduler, Maintenance	11 .99
01311 - Secretary I	11 .99
01312 - Secretary II	13 .41
01313 - Secretary III	14 .63
01314 - Secretary IV	16 .51
01315 - Secretary V	18 .29
01320 - Service Order Dispatcher	13 .19
01341 - Stenographer I	13 .51
01342 - Stenographer II	15 .17
01400 - Supply Technician	16 .32
01420 - Survey Worker (Interviewer)	13 .41
01460 - Switchboard Operator-Receptionist	7 .71
01510 - Test Examiner	13 .41
01520 - Test Proctor	13 .41
01531 - Travel Clerk I	9 .86
01532 - Travel Clerk II	10 .98
01533 - Travel Clerk III	11 .72
01611 - Word Processor I	10 .61
01612 - Word Processor II	11 .91
01613 - Word Processor III	13 .32
 <b>03000 - Automatic Data Processing Occupations</b>	
03010 - Computer Data Librarian	9 .20
03041 - Computer Operator I	10 .32
03042 - Computer Operator II	11 .57
03043 - Computer Operator III	12 .87
03044 - Computer Operator IV	14 .30
03045 - Computer Operator V	15 .84
03071 - Computer Programmer I (1)	14 .22
03072 - Computer Programmer II (1)	17 .60
03073 - Computer Programmer III (1)	21 .49
03074 - Computer Programmer IV (1)	26 .05
03101 - Computer Systems Analyst I (1)	20 .39
03102 - Computer Systems Analyst II (1)	24 .66
03103 - Computer Systems Analyst III (1)	26 .66
03160 - Peripheral Equipment Operator	10 .69
 <b>05000 - Automotive Service Occupations</b>	
05005 - Automotive Body Repairer, Fiberglass	15 .24
05010 - Automotive Glass Installer	14 .02
05040 - Automotive Worker	14 .02

05070 - Electrician, Automotive	14 .52
05100 - Mobile Equipment Servicer	12 .99
05130 - Motor Equipment Metal Mechanic	15 .03
05160 - Motor Equipment Metal Worker	14 .02
05190 - Motor Vehicle Mechanic	15 .03
05220 - Motor Vehicle Mechanic Helper	12 .44
05250 - Motor Vehicle Upholstery Worker	13 .53
05280 - Motor Vehicle Wrecker	14 .02
05310 - Painter, Automotive	14 .52
05340 - Radiator Repair Specialist	14 .02
05370 - Tire Repairer	12 .55
05400 - Transmission Repair Specialist	15 .04
<b>07000 - Food Preparation and Service Occupations</b>	
(not set) - Food Service Worker	7 .16
07010 - Baker	9 .39
07041 - Cook I	8 .68
07042 - Cook II	9 .39
07070 - Dishwasher	7 .16
07130 - Meat Cutter	10 .41
07250 - Waiter/Waitress	7 .65
<b>09000 - Furniture Maintenance and Repair Occupations</b>	
09010 - Electrostatic Spray Painter	14 .72
09040 - Furniture Handler	11 .58
09070 - Furniture Refinisher	14 .72
09100 - Furniture Refinisher Helper	12 .62
09110 - Furniture Repairer, Minor	13 .71
09130 - Upholsterer	14 .72
<b>11030 - General Services and Support Occupations</b>	
11030 - Cleaner, Vehicles	7 .38
11060 - Elevator Operator	7 .99
11090 - Gardener	8 .75
11121 - House Keeping Aid I	6 .66
11122 - House Keeping Aid II	7 .16
11150 - Janitor	8 .01
11210 - Laborer, Grounds Maintenance	7 .71
11240 - Maid or Houseman	6 .66
11270 - Pest Controller	10 .42
11300 - Refuse Collector	8 .43
11330 - Tractor Operator	8 .82
11360 - Window Cleaner	8 .54

**12000 - Health Occupations**

12020 - Dental Assistant	10 .93
12040 - Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver	10 .93
12071 - Licensed Practical Nurse I	10 .38
12072 - Licensed Practical Nurse II	11 .64
12073 - Licensed Practical Nurse III	13 .02
12100 - Medical Assistant	9 .77
12130 - Medical Laboratory Technician	12 .23
12160 - Medical Record Clerk	10 .77
12190 - Medical Record Technician	13 .54
12221 - Nursing Assistant I	7 .42
12222 - Nursing Assistant II	8 .30
12223 - Nursing Assistant III	9 .06
12224 - Nursing Assistant IV	10 .17
12250 - Pharmacy Technician	12 .19
12280 - Phlebotomist	11 .90
12311 - Registered Nurse I	15 .34
12312 - Registered Nurse II	18 .80
12313 - Registered Nurse II, Specialist	18 .80
12314 - Registered Nurse III	22 .71
12315 - Registered Nurse III, Anesthetist	22 .71
12316 - Registered Nurse IV	27 .21

**13000 - Information and Arts Occupations**

13002 - Audiovisual Librarian	18 .16
13011 - Exhibits Specialist I	12 .91
13012 - Exhibits Specialist II	15 .99
13013 - Exhibits Specialist III	19 .56
13041 - Illustrator I	12 .91
13042 - Illustrator II	15 .99
13043 - Illustrator III	19 .56
13047 - Librarian	18 .29
13050 - Library Technician	13 .41
13071 - Photographer I	12 .30
13072 - Photographer II	13 .71
13073 - Photographer III	16 .98
13074 - Photographer IV	20 .76
13075 - Photographer V	25 .11

**15000 - Laundry, Dry Cleaning, Pressing and Related Occupations**

15010 - Assembler	7 .06
15030 - Counter Attendant	7 .06
15040 - Dry Cleaner	9 .08

15070 - Finisher, Flatwork, Machine	7 .06
15090 - Presser, Hand	7 .06
15100 - Presser, Machine, Drycleaning	7 .06
15130 - Presser, Machine, Shirts	7 .06
15160 - Presser, Machine, Wearing Apparel, Laundry	7 .06
15190 - Sewing Machine Operator	9 .74
15220 - Tailor	10 .35
15250 - Washer, Machine	7 .69
<b>19000 - Machine Tool Operation and Repair Occupations</b>	
19010 - Machine- Tool Operator (Toolroom)	14 .72
19040 - Tool and Die Maker	15 .27
<b>21000 - Material Handling and Packing Occupations</b>	
21010 - Fuel Distribution System Operator	15 .50
21020 - Material Coordinator	15 .22
21030 - Material Expediter	15 .22
21040 - Material Handling Laborer	8 .18
21050 - Order Filler	10 .71
21071 - Forklift Operator	12 .34
21080 - Production Line Worker (Food Processing)	12 .21
21100 - Shipping/Receiving Clerk	9 .89
21130 - Shipping Packer	10 .42
21140 - Store Worker I	10 .15
21150 - Stock Clerk (Shelf Stocker; Store Worker II)	12 .55
21210 - Tools and Parts Attendant	12 .21
21400 - Warehouse Specialist	12 .21
<b>23000 - Mechanics and Maintenance and Repair Occupations</b>	
23010 - Aircraft Mechanic	17 .02
23040 - Aircraft Mechanic Helper	14 .01
23050 - Aircraft Quality Control Inspector	17 .50
23060 - Aircraft Servicer	15 .22
23070 - Aircraft Worker	15 .77
23100 - Appliance Mechanic	14 .72
23120 - Bicycle Repairer	12 .72
23125 - Cable Splicer	19 .28
23130 - Carpenter, Maintenance	14 .93
23140 - Carpet Layer	14 .21
23160 - Electrician, Maintenance	17 .42
23181 - Electronics Technician, Maintenance I	11 .37
23182 - Electronics Technician, Maintenance II	19 .27
23183 - Electronics Technician, Maintenance III	20 .03

23260 - Fabric Worker	13 .71
23290 - Fire Alarm System Mechanic	17 .53
23310 - Fire Extinguisher Repairer	15 .15
23340 - Fuel Distribution System Mechanic	19 .03
23370 - General Maintenance Worker	14 .21
23400 - Heating, Refrigeration and Air Conditioning Mechanic	15 .44
23430 - Heavy Equipment Mechanic	17 .42
23440 - Heavy Equipment Operator	13 .64
23460 - Instrument Mechanic	17 .53
23470 - Laborer	7 .26
23500 - Locksmith	14 .72
23530 - Machinery Maintenance Mechanic	17 .53
23550 - Machinist, Maintenance	15 .24
23580 - Maintenance Trades Helper	12 .62
23640 - Millwright	16 .70
23700 - Office Appliance Repairer	15 .64
23740 - Painter, Aircraft	14 .72
23760 - Painter, Maintenance	14 .72
23790 - Pipefitter, Maintenance	17 .53
23800 - Plumber, Maintenance	16 .93
23820 - Pneudraulic Systems Mechanic	17 .53
23850 - Rigger	16 .24
23870 - Scale Mechanic	16 .34
23890 - Sheet-Metal Worker, Maintenance	17 .95
23910 - Small Engine Mechanic	14 .20
23930 - Telecommunication Mechanic I	15 .24
23931 - Telecommunication Mechanic II	15 .77
23950 - Telephone Lineman	16 .24
23960 - Welder, Combination, Maintenance	15 .24
23965 - Well Driller	17 .53
23970 - Woodcraft Worker	16 .24
23980 - Woodworker	14 .72
<b>24000 - Personal Needs Occupations</b>	
24570 - Child Care Attendant	6 .88
24580 - Child Care Center Clerk	8 .59
24600 - Chore Aid	6 .66
24630 - Homemaker	9 .13
<b>25000 - Plant and System Operation Occupations</b>	
25010 - Boiler Tender	17 .70
25040 - Sewage Plant Operator	15 .32
25070 - Stationary Engineer	17 .70

25190 - Ventilation Equipment Tender	12 .62
25210 - Water Treatment Plant Operator	14 .72
<b>27000 - Protective Service Occupations</b>	
(not set) - Police Officer	16 .15
27004 - Alarm Monitor	8 .20
27006 - Corrections Officer	12 .03
27010 - Court Security Officer	13 .78
27040 - Detention Officer	12 .92
27070 - Firefighter	13 .49
27101 - Guard I	7 .81
27102 - Guard II	8 .74
<b>28000 - Stevedoring/Longshoremen Occupations</b>	
28010 - Blocker and Bracer	14 .69
28020 - Hatch Tender	14 .64
28030 - Line Handler	14 .64
28040 - Stevedore I	13 .25
28050 - Stevedore II	14 .31
<b>29000 - Technical Occupations</b>	
21150 - Graphic Artist	16 .46
29010 - Air Traffic Control Specialist, Center (2)	28 .21
29011 - Air Traffic Control Specialist, Station (2)	19 .46
29012 - Air Traffic Control Specialist, Terminal (2)	21 .43
29023 - Archeological Technician I	16 .07
29024 - Archeological Technician II	17 .96
29025 - Archeological Technician III	22 .26
29030 - Cartographic Technician	19 .75
29035 - Computer Based Training (CBI) Specialist/ Instructor	18 .46
29040 - Civil Engineering Technician	17 .60
29061 - Drafter I	11 .32
29062 - Drafter II	16 .78
29063 - Drafter III	20 .47
29064 - Drafter IV	22 .26
29081 - Engineering Technician I	14 .25
29082 - Engineering Technician II	15 .99
29083 - Engineering Technician III	19 .55
29084 - Engineering Technician IV	23 .78
29085 - Engineering Technician V	29 .63
29086 - Engineering Technician VI	35 .53
29090 - Environmental Technician	14 .30
29100 - Flight Simulator/Instructor (Pilot)	21 .89

29160 - Instructor	17 .56
29210 - Laboratory Technician	12 .63
29240 - Mathematical Technician	21 .43
29361 - Paralegal/Legal Assistant I	14 .63
29362 - Paralegal/Legal Assistant II	16 .51
29363 - Paralegal/Legal Assistant III	20 .19
29364 - Paralegal/Legal Assistant IV	24 .44
29390 - Photooptics Technician	22 .92
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29491 - Unexploded Ordnance (UXO) Technician I	17 .93
29492 - Unexploded Ordnance (UXO) Technician II	21 .70
29493 - Unexploded Ordnance (UXO) Technician III	26 .01
29494 - Unexploded (UXO) Safety Escort	17 .93
29495 - Unexploded (UXO) Sweep Personnel	17 .93
29620 - Weather Observer, Senior (3)	16 .12
29621 - Weather Observer, Combined Upper Air and Surface Programs (3)	14 .52
29622 - Weather Observer, Upper Air (3)	14 .52
<b>31000 - Transportation/ Mobile Equipment Operation Occupations</b>	
31030 - Bus Driver	10 .66
31260 - Parking and Lot Attendant	6 .91
31290 - Shuttle Bus Driver	10 .51
31300 - Taxi Driver	8 .48
31361 - Truckdriver, Light Truck	10 .15
31362 - Truckdriver, Medium Truck	12 .19
31363 - Truckdriver, Heavy Truck	13 .53
31364 - Truckdriver, Tractor-Trailer	13 .53
<b>99000 - Miscellaneous Occupations</b>	
99020 - Animal Caretaker	7 .97
99030 - Cashier	6 .80
99041 - Carnival Equipment Operator	8 .75
99042 - Carnival Equipment Repairer	9 .16
99043 - Carnival Worker	7 .16
99050 - Desk Clerk	6 .58
99095 - Embalmer	17 .93
99300 - Lifeguard	9 .33
99310 - Mortician	18 .23
99350 - Park Attendant (Aide)	9 .33
99400 - Photofinishing Worker (Photo Lab Tech., Darkroom Tech)	7 .30
99500 - Recreation Specialist	9 .13
99510 - Recycling Worker	9 .81
99610 - Sales Clerk	7 .43

99620 - School Crossing Guard (Crosswalk Attendant)	7 .96
99630 - Sport Official	6 .46
99658 - Survey Party Chief (Chief of Party)	10 .99
99659 - Surveying Technician (Instr. Person/Surveyor Asst /Instr.)	9 .33
99660 - Surveying Aide	6 .80
99690 - Swimming Pool Operator	10 .42
99720 - Vending Machine Attendant	9 .24
99730 - Vending Machine Repairer	10 .41
99740 - Vending Machine Repairer Helper	9 .24

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VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 8 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)

2) APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL: An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. at the rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay.

3) WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordinance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than



small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**\*\* NOTES APPLYING TO THIS WAGE DETERMINATION \*\***

**Source of Occupational Title and Descriptions:**

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by the Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

**REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}**

**Conformance Process:**

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6(C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's

recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).

4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour decision to the contractor.

6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON, D.C. 20210

William W. Gross  
Director

Division of Wage  
Determinations

Wage Determination No.: 1999-0575  
Revision No.: 2  
Date of Last Revision: 03/18/2003

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States: Pennsylvania, West Virginia

Area: Pennsylvania County of Allegheny  
West Virginia County of Monongalia

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Employed on Department of Energy contract for research facility operations support services.

Collective Bargaining Agreement between Parsons Federal Services, Inc. (Pittsburgh Site) and Parsons Federal Services, Inc. (Morgantown, WV) and United Mine Workers of America Local 1914 (Pittsburgh site) & Local 717 (Morgantown site) effective January 1, 2003 through December 31, 2005.

In accordance with Sections 2(a) and 4(c) of the Service Contract Act, as amended, employees employed by the contractor(s) in performing services covered by the Collective Bargaining Agreement(s) are to be paid wage rates and fringe benefits set forth in the current collective bargaining agreement and modified extension agreement(s).

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#10#13

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**PARSONS FEDERAL SERVICES INC.  
(Pittsburgh Site)**

**AND THE**

**UNITED MINE WORKERS OF AMERICA**

**Local 1914**

**JANUARY 1, 2003, THROUGH DECEMBER 31, 2005**

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## **ARTICLE I PURPOSE**

It is the intent and purpose of Parsons Federal Services Inc. ("PFSI" or the "Company") and the Union to establish, through this Agreement, the wages, hours of work, and conditions of employment about which the Company and the Union bargained for the Employees of the Company in the unit defined herein; to provide a procedure for processing disputes between the Company and the Union as to the interpretation and application of the provisions of this Agreement; and generally to govern the relationship between the Company and the Union and its members.

2. The Union recognizes the necessity to achieve efficiency in production and acknowledges that it is the further purpose of this Agreement to prevent interruptions of work and interference with the efficient operation of the Company's business. It is the intent and purpose of the parties to promote harmony between the Company, its Employees, and the Union for the efficient and successful operation of the Company's contract with the government so that the Employees and the Company may mutually benefit.

Except as specified in this Agreement, the Union and the Employees it represents are not waiving rights which exist under the National Labor Relations Act to bargain over Employees' wages, hours and working conditions. Nor do the Union and the Employees it represents waive any right to challenge any governmental action that would dictate a change in a term and condition of employment provided for under this Agreement.

4. The Company and the Union mutually agree not to discriminate in any way against any Employee with respect to hiring, compensation and terms or conditions of employment because of applicable laws relating to the disabled and Vietnam-era Veterans. Neither the Company nor the Union shall discriminate against any Employee on the basis of race, creed, national origin, gender, age, and political activity or otherwise.

## **ARTICLE II - SCOPE AND COVERAGE**

The Company hereby recognizes the Union as the exclusive bargaining representative for the purpose of bargaining collectively as required by Section 8D of the NLRA with respect to wages, hours and other conditions of employment, for the Company's Employees regularly assigned to the following bargaining unit, all full-time and regular part-time Engineering Technicians I, II, III, IV and V, employed by the Employer at its Morgantown, WV and Pittsburgh, PA Facility on the Research Facility Operations Contract or any successor contracts.

2. Managers and Supervisors shall not perform bargaining unit work except in cases of emergency or Employee training/instruction.

## ARTICLE III - REPRESENTATION

### Section 1 - Representative

The Representative of the Union shall have access to the shops and office of Parsons Federal Services Inc. at NETL for the purposes of adjusting disputes, investigating working conditions, and ascertaining that the Agreement is being adhered to, providing there is no interruption of the Company's business and providing further that (a) the Union Representative notifies the Human Resources Representative in advance of any visit and (b) prior to entering any facilities under the control of the Company, the visiting representative reports to the Human Resources Office or the Operational Manager's Office in their absence.

### Section 2 - Shop Stewards

The Company recognizes the right of the Union to designate one Steward and one (1) Alternate.

- (a) The authority of the Steward so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

The investigation and presentation of grievances in accordance with the provisions of this collective bargaining Agreement.

- (2) The transmission of such messages and information as shall originate with, and are authorized by the Union or its officers.

### Section 3 - Scope of Stewards' Union Activities

The Stewards' Union activities on Company time shall fall within the scope of the following functions:

To investigate a complaint or grievance and to present a complaint or grievance to an Employee's immediate manager in an attempt to settle the matter for the Employee or group of Employees who may be similarly affected.

To meet by appointment with an appropriate manager or other designated representative of the Company, when necessary, to adjust grievances in accordance with the Grievance Procedure of the Agreement.

- (c) The Steward shall be allowed to perform these duties during the Steward's working hours without loss of compensation. The performance of these duties shall be limited to a reasonable amount of time per shift. The duties specified above shall not relieve the Steward of his/her duties, and obligations as an Employee of the Company, and he/she shall continue to be subject to all rules, regulations and procedures applicable to other Employees. The Steward shall notify his/her immediate manager before leaving the work area to conduct Union business.

#### **Section 4 - Checkoff**

The membership dues, including initiation fees, and assessments of the United Mine Workers of America and its various subdivisions, credit, voluntary COMPAC contributions and other voluntary deductions, the Union-sponsored group auto insurance, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employers covered by this contract and shall be remitted by the Employers to the properly designated officers of the Union for distribution to its various branches. Such remittance shall be made within 30 days of the date such amount has been checked off. The Employer shall also submit an itemized statement showing the name of each Employee, his/her Social Security number, hours worked, and the amount checked off for dues, initiation fees, and assessments. Such itemized statement shall be made within 60 days of the date the check-off has been made, and shall include a list of Employees from whom dues, initiation fees and assessments have not been collected.

In order that this section may become effective and operate within the limitations of the Labor-Management Relations Act of 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the respective Employers, and the Employers agree to aid, assist and cooperate in obtaining, written authorizations from each Employee so employed. Upon the presentation to the Employers of such authorizations in such reasonable form as time and circumstances may allow, said Employers shall make deductions so authorized and deliver the same to the designated District officer of the Union or to such authorized representative as may be designated by the Union.

#### **Section 5 - Notification**

The Union shall notify the Company of the amount of dues to be withheld by the Company, and shall advise the Company in writing at least two (2) months prior to any change in the amount to be withheld.

#### **Section 6 - Membership**

It is agreed that all Employees coming under the terms of this Agreement shall be required to make application to, and become members of, the Union within thirty (30) days of their employment. In the event an Employee does not become a member of the Union within the time frame prescribed above, the Union will approach management and request that the Employee be terminated from any employment which is covered under this Agreement. The Union agrees to hold the Company harmless from any action that may come about as a result of the application of this section.



## **ARTICLE IV - GENERAL WAGE PROVISIONS**

### **Section 1 - Wage Rates**

The hourly rates for Employees covered by this Agreement shall be as set forth in Exhibit "A". Wages shall be paid bi-weekly.

### **Section 2 - Shift Differentials**

The Company shall pay a shift differential of 5% for the second shift and 7% for the third shift.

### **Section 3 - Out of Classification Work**

When a qualified Employee is specifically assigned to and works independently for a period of three (3) hours or more in a higher job classification, the Employee will receive the rate of the higher classification for the duration of his/her performance of the job.

### **Section 4 - Temporary Assignments**

Every reasonable effort shall be made to keep an Employee at work on the job duties normally and customarily a part of his regular job.

### **Section 5 - Schedule Changes**

An Employee's schedule shall not be changed for the explicit purpose of avoiding overtime.

### **Section 6 - Tuition Refund**

Tuition refund will be provided in accordance with PFSI's corporate policy at the time of this Agreement.

### **Section 7 - Educational Assistance**

The Company agrees to provide reimbursement of lost wages and expenses for Employees attending and successfully completing courses offered by the Union and with prior approval by Company (e.g. Safety programs, labor management cooperative programs, etc.).

## ARTICLE V - GRIEVANCE PROCEDURE

**Section 1.** All grievances that may arise will be handled in the following manner. Any written grievance must be filed within five (5) working days of the event given rise to the grievance. The five (5) days shall be considered from the time the grievant should have reasonably known of the grievance. In cases involving dismissals for cause, the grievance may be instituted at step three. In all steps, the grievant shall have the right to be present and at his/her request be accompanied by his/her Union representative.

**Step 1** Prior to processing any written grievance, any Employee who believes he has a grievance must discuss it with his immediate manager, with the option of having his steward present. If the Employee is dissatisfied with the answer given by his manager or no answer is given within five (5) normal working days, Step 2 will be followed.

**Step 2** The Employee and his steward shall present to the Human Resources Representative a written grievance form which has been approved by the Union and the Company stating what the grievance is and the remedy sought. If the Human Resource representative's decision is not acceptable, or is not given within five (5) normal workdays, Step 3 will be followed.

**Step 3** The grievance shall be forwarded by the Union steward to the Operations Manager or his designated representative within five (5) normal workdays after the Human Resource Representative's unacceptable written decision, or failure to give a decision. The Operations Manager shall meet with the appropriate district representative or his designated representative within five (5) days of receipt of the grievance. If the Operation's Manager's decision is not acceptable or is not given within five (5) normal workdays, Step 4 will be followed.

**Step 4** The Union may, no later than five (5) working days after receipt of the Company's decision in Step 3 submit the matter to arbitration by requesting that the Federal Mediation and Conciliation Service submit a list of five (5) names of arbitrators, from which the Company and the Union shall choose an impartial arbitrator to decide the matter. Following receipt of the list of names of arbitrators the parties shall then alternately strike the names from the panel and the name remaining shall be the Arbitrator in the case. The determination of which Party is to strike first shall be determined by a coin flip. Striking shall take place within seven (7) days of receipt of the arbitrators list.

## **Section 2**

In arbitration proceedings, the expense of the impartial Arbitrator shall be shared by both parties. The parties will be responsible for paying their own representatives and witnesses.

## **Section 3**

All arbitration hearings shall be held at a mutually agreed upon neutral location with the Company and the Union agreeing to equally share expenses incurred in the hearing room.

## **Section 4**

The findings of the arbitrator shall be final and binding on all parties.

## **Section 5**

All time limits stated in this article shall be treated as jurisdictional in nature and the failure to follow any of the set times limits shall result in the grievance being void and waived and the matter shall end without resort to arbitration. A normal workday is defined as any day on which a bargaining unit Employee is at work Monday through Friday, excepting holidays.

## **Section 6**

Except by mutual written agreement to the contrary, only one grievance shall be taken to arbitration at any time before the same arbitrator.

## **Section 7**

The impartial Arbitrator shall only have jurisdiction and authority to determine the meaning, application of, or compliance with provisions of this Agreement and shall not have jurisdiction or authority to add or detract from or alter in any way such provisions or any rules of discipline attached hereto.

## **Section 8**

Time frames pursuant to discharge shall be commensurate with provisions of Article VII Section 1, Discharge/Arbitration of this Labor Agreement. In these cases arbitrators shall be selected immediately by the parties pursuant to Article V Section 1, Step 4 Grievance Procedure as it pertains to the Arbitrator selection process and the actual arbitration shall be held within seven days from the time it is referred to arbitration at Step 4.

**Section 9**

Time limitations may be waived by mutual agreement of both parties.

**Section 10**

The Company and the Union may refer grievances to non-binding mediation based on mutual consent.

**ARTICLE VI - DISCIPLINARY PROGRAM AND DISCHARGE**

**Disciplinary Program**

No one may be disciplined or discharged without just cause. Discipline will be applied without discrimination on account of race, color, religion, gender, age, or national origin, disability or veteran's status. The procedure will be carried out uniformly in accordance with the following steps:

- |                                 |                                                                                                                    |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b><u>1. First Offense</u></b>  | Verbal warning, record on file with Manager and Local Steward.                                                     |
| <b><u>2. Second Offense</u></b> | Written warning with record on file with the Human Resource Office, copy given to the Local Union Steward.         |
| <b><u>3. Third Offense</u></b>  | Two working days off without pay, record on file with the Human Resources Office, copy to the Local Union Steward. |
| <b><u>4. Fourth Offense</u></b> | Discharge                                                                                                          |

In case of serious offenses, which affect customer relations (and thus jeopardize the jobs of fellow workers), or which could result in unlawful treatment, injury or death, to the Employee, fellow workers, or the public, the Employer shall have the right to bypass any or all of the progressive discipline steps and may discipline or discharge the Employee immediately subject to the arbitration procedure. These offenses shall include, but shall not be limited to the following;

1. Possession, use, sale or distribution of illegal substances and/or intoxicating beverages on the work site.
2. Bringing firearms or other weapons on the job.
3. Intentional theft of Government, Employer or Employee property.
4. Intentional destruction of Government, Employer or Employee property.
5. Intentional fraudulent activity.
6. Intentional falsification of Government or Company documents.
7. Sexual harassment.

Disciplinary actions will remain in an Employee's personnel file for a maximum period of one year unless otherwise designated by the Company.

### **Section 1 - Attendance Control**

Excessive use/abuse of absenteeism or tardiness increases costs, creates an undue hardship on fellow Employees and limits ability to effectively plan and accomplish customer goals. Any Employee requesting time off must have prior approval of their manager. An unexcused absence is an absence that does not have prior approval of management or an absence without sufficient and appropriate documentation upon return to work. Employees absent for three (3) consecutive working days without a valid excuse or proper authorization may be considered to have voluntarily quit. Otherwise, the policy toward absenteeism will be as follows:

- 1.) Unexcused absence or tardy first occurrence Verbal warning.
- 2.) Unexcused absence or tardy / second occurrence / Written warning.
3. Unexcused absence or tardy / third occurrence 3 day suspension.
4. Unexcused absence or tardy / fourth occurrence Termination.

All disciplinary actions will remain in the Employee's personnel file for a period of one year.

## **ARTICLE VII - DISCHARGE/ARBITRATION**

### **Section 1 - Discharge**

In cases of Discharge, the Company shall notify the Local Union President and/or Union stewards of the discharge and its reason for such action in writing within two (2) working days. An Employee who claims he/she has been discharged without just cause must notify the Union within two (2) working days following the discharge. Notice that a discharge is being grieved must be made to the Company, in writing by the Union, within five (5) working days from the date of discharge. Discussions between the Company and the Union Representative concerning the discharge shall be considered Step 3. If not settled in Step 3, all discharges will be called in for immediate Arbitration.

## **ARTICLE VIII - HOURS AND OVERTIME**

**Section 1** When a shift is needed to respond to customer need, the Company will provide notice of a shift change to affected Employees no later than 2:00 p.m. Thursday in the week prior to the proposed shift change.

**Section 2.** A negotiated overtime distribution policy and overtime tracking roster will be posted on the appropriate bulletin boards.

**Section 3.** The workday shall begin at 12:01 a.m. and shall end at 12:00 midnight. The third shift, which normally begins at 11:00 p.m., will be considered the first shift of the following day.

**Section 4.** For payroll purposes the work week shall begin at 12:01 a.m. Saturday and shall end at 12:00 midnight the following Friday.

**Section 5. Regular Work Week**

The regular work week for Employees will consist of five (5) workdays during the period Monday through Friday, with two (2) consecutive days off (Saturday and Sunday), except for shift work which may be five (5) consecutive workdays during the period Monday through Sunday with two (2) consecutive days off.

**Section 6. Regular Workday**

The regular workday for Employees will consist of an eight (8) hour workday including one-half (1/2) hour unpaid meal and two (2) 15 min. paid break periods. For Employees working a Regular Work Week, work in excess of eight (8) hours shall be paid at time and one half. First shift shall be 7:00 a.m. until 3:00 p.m. Second shift shall be from 3:00 p.m. till 11:00 p.m. Third shift shall be 11:00 p.m. until 7:00 a.m.

**Section 7. Overtime Distribution Policy**

**a) Purpose**

The Company will make every reasonable effort to divide work among the Employees by classification and shift as impartially as is practicable. In doing this, it is recognized that the Company will take into account the qualifications of Employees for the job to be performed and efficient operation.

**b) Procedures**

**Step 1** In assigned overtime, Employees shall perform the overtime work required. Employees actively working the task requiring overtime shall perform the overtime work required. In the event of extenuating circumstances an Employee is unable to perform overtime work assigned, the overtime assignment shall be referred to the overtime distribution list for equitable distribution.

**Step 2** Employees will be selected for the overtime on the basis of the lowest overtime credited hours, provided they are qualified to perform the work.

**Step 3** The necessity for the Company to work overtime to provide rapid response to emergencies is recognized in order to meet customer service

requirements. It is expected that Employees will continue to cooperate in working overtime for the Company's and Employee's best interests. If there is an insufficient number of Employees to perform the required work, Employees will be selected on the basis of their ability to perform the job in the reverse order of seniority. The least senior qualified person will be required to perform the needed work.

c) **Scheduled Overtime**

Employees who do not want to be considered for overtime work will declare that fact and it will be so designated by the Manager. Overtime will not be tracked for that Employee. If these Employees desire to return to the distribution of overtime, they will be credited as having the highest overtime, plus one hour, in their classification.

d) **Emergency Overtime**

Emergency overtime will be equitably distributed when possible. Emergency overtime will be recorded separately, but included in the total overtime hours.

e) **New Hires**

On the hire date, new Employees will be credited with the highest overtime hours, plus one hour in the classification for distribution purposes.

f) **Record Keeping**

A written record of overtime worked by Employees will be maintained by the Employee's Manager. The overtime record will indicate the Employee's name and the date. Employees will be credited with overtime worked by recording the actual number of overtime hours worked. Employees unable to work overtime, when requested, shall be deemed to have worked the overtime hours actually worked on the task for distribution of overtime purposes.

Should the Company and the Union determine that an Employee was improperly denied overtime opportunities, the Company shall provide the Employee with future available scheduled overtime, provided the Employee is qualified for the job to be done and it does not disrupt efficient operation.

g) **Time Sheets**

This policy is for distribution of overtime hours worked. For pay purposes, overtime hours are the hours recorded on the time sheet.

**h) Implementation of Policy**

To begin the overtime distribution process the Company will provide a report of year-to-date overtime worked. These hours will be transferred to an Overtime Distribution Record form.

**Section 8 - Four-Ten Hour Shift**

The Company may elect four/ten hour work shifts, either Monday through Thursday or Tuesday through Friday in order to meet the customers' needs. The Union and affected Employees will be given five working days notice prior to the commencement of the shift. The four/ten shifts will originally be established on a volunteer basis. If there are more volunteers than needed the Employees with the most seniority will be awarded the four/ten's provided they have the necessary skills to perform the job. If there are not enough Employees volunteering, the Employees with the least seniority will be required to work the four/ten's provided they have the necessary skills to perform the job. On this four/ten shift Employees will be paid time and one half of their straight time hourly rate for all hours in excess of ten (10) hours per day and forty (40) hours in a week.

**Section 9 - Altered Work Schedule (AWS)**

The Company may assign Employees an altered work schedule (AWS) consisting of eight (8) hours between the hours of 6:00 a.m. and 6:00 p.m. to meet customer requirements. At least three (3) days notice must be given before a new schedule is implemented. Employees may request an AWS outside of the normal work hours/days for personal needs. The AWS must ensure that customer support is maintained.

**Section 10 - Overtime Calculations and Premium Days**

- a. Time worked on Saturday and Sunday shall be paid at time and one-half (1-1/2) of the Employee's rate, and time worked on Holidays shall be paid at two and one half (2 1/2) times the Employee's rate.
- b. Holidays and personal leave shall be included as time worked for the purpose of calculating overtime.
- c. There will be no "pyramiding" of overtime allowed.

**Section 11 - Call Out Pay**

An Employee called back to work after having completed his/her regular shift and gone home, shall receive a minimum of four (4) hours at their straight time rate of pay or pay for actual hours worked whichever is greater.

**Section 12 - Show Up Pay**

An Employee reporting for work at his regular scheduled starting time and for whom no work is provided, shall receive three (3) hours show up time unless



notified by the Company at least three (3) hours prior to their regularly scheduled starting time not to report to work.

### **Section 13 - Administrative Leave**

When the site is closed due to weather or other catastrophic reasons, Employees will receive administrative leave only when reimbursement is allowed by the DOE.

## **ARTICLE IX- SENIORITY**

### **Section 1. – Seniority**

Site seniority is defined as a Bargaining Unit Employee's continuous service at the site with Parsons Federal Services Inc. and all predecessor employers.

- b) Bargaining unit seniority is defined as a bargaining unit member's continuous service earned under this Labor Agreement or predecessor Labor Agreement.
- c) The Company shall supply the Union with a job classification and site seniority list of the Employees covered by this Agreement. Such list(s) shall be revised annually.
- d) A probationary period of ninety (90) days will be observed for each new Employee during which time the Company will make specific and periodic evaluations of the Employee's qualifications, skills and abilities. During this probationary period, an Employee shall be considered as having no seniority rights, provided that upon completion of the probationary period, an Employee shall be entitled to seniority rights as measured from an Employee's employment date. During the probationary period, a new Employee may be discharged in accordance with Company Policy and procedure without recourse to the grievance procedure.

### **Section 2. – Layoff**

The Company will determine the time of layoffs and the number of Employees to be laid off and in what job classifications layoffs will occur.

- 1) If a layoff should occur, the Union shall be notified at least two (2) weeks in advance. Such layoffs shall be made by bargaining unit seniority within the job classification affected. Should bargaining unit seniority within a job classification be equal, then site seniority shall be the determining factor as to who shall be laid off first. Should bargaining unit seniority and site seniority of the affected Employees be equal, then the determining criteria for breaking the tie shall be a flip of the coin with the Employee losing the coin flip being scheduled to be laid off.

- 2) An Employee scheduled to be laid off within any classification may use his/her bargaining unit seniority to bump a less-senior bargaining unit Employee who holds a classification for which he/she is qualified. If bargaining unit seniority is equal, then site seniority shall be used as the tiebreaker. Recall to employment from layoff shall be in reverse order of the layoff.
- 3) In the case of a layoff, probationary Employees shall be laid off first.
- 4) If at the time of layoff, any eligible Employee refuses to exercise their seniority right to bump less senior Employees within the active workforce, such Employee shall continue to retain seniority rights to be recalled. Any Employee scheduled to be laid off must notify the Company of an intention to exercise his/her seniority bumping rights within two (2) working days of the layoff notice. An Employee displaced in the bumping process may similarly exercise his/her seniority rights to displace another Employee in accordance with the same criteria.

### Section 3 - Termination of Seniority

An Employee's seniority shall be terminated and his/her rights under this Agreement forfeited for the following reasons:

- Discharge for just cause, quit, retirement, or resignation;
- (2) Failure to give notice of intent to return to work after recall within five (5) working days, or failure to return to work on the date specified for recall. An excuse from a medical doctor, leave secured by statute or a covered contractual situation, shall exempt an Employee from this return to work requirement. However, such circumstances must be communicated to the Employer within the five (5) day period outlined above.
  - Time lapse of eighteen (18) months, or for a period equal to the Employee's seniority (whichever is less) since the last day of actual work for the Company.
- (4) Failure to return to work upon expiration of a leave of absence;
  - Absence in excess of one (1) year due to physical disability; except where such absence is due to compensable disability incurred during the course of such employment, such absence shall not break continuous service, provided that such individual has returned to work within a seven (7) calendar day period after final payment of statutory compensation for such disability or after the end of the period used in calculating a lump sum payment. Upon return to work from a period of Disability, the Employee must present appropriate documentation verifying their availability date and medical release.

## **Section 4 – Recall**

### **a) Order of Recall**

If the Company determines to fill job vacancies, such vacancies shall be filled through the job posting and selection process from the active workforce first. All excess vacancies, not filled through this bidding procedure, or left vacant as a result of the bidding process shall be filled from the laid off panel of Employees awaiting recall who have the seniority and the qualifications to return to work and assume the job vacancy that is open. Such Employees, eligible for recall, shall be recalled in reverse order of layoff using seniority and qualifications to perform the duties of the job vacancy as the criteria for recall.

### **b) Notice to Recall**

The Company will forward a notice of recall by certified mail to the last known address of the Employee reflected on records. The Employee must, within five (5) working days of delivery or attempted delivery of the notice of recall, notify the Company of his/her intent to return to work on the date specified for recall and thereafter, return to work on such date.

## **Section 5 - Job Posting**

When the Company determines to fill a job within the Bargaining Unit, the Company will put a notice of the vacancy or job opening on the Employee bulletin boards for five (5) workdays. Subject to the provisions elsewhere in this Agreement any Employee may submit a bid for the job to the Human Resources Office in writing, during the posting period. The Company shall not be required to post a notice of vacancy or job opening for a particular job more than once every sixty (60) days. Any bid submitted within a posting period shall remain valid for sixty (60) days. If the Employer does not fill the job that is bid within 60 days, regardless of the reason, and later decides to fill that vacancy, the bid must be reposted before the job can be awarded.

## **Section 6 - Selection**

From among Employees qualified for a posted job, who submit bids for the job, the Company will award the job to the most senior/qualified Employee. Provided that if two or more bidders have the same bargaining unit seniority, the Company will award the job to the Employee with the greater site seniority. If no Employees qualified for the posted job submit bids for the job, or no one from the recall panel is eligible to fill the vacancy, the Company may fill the job from any source.

## **Section 7 - Restriction on Bidding**

An Employee who is awarded a job for which he/she bid, must accept it. If, immediately prior to being awarded a posted job, the Employee's designated job

classification was the same as or higher than the posted job, the Employee may not bid for another job for a period of twelve (12) months after being awarded the job.

#### **Section 8 - Disqualification of a Bidder**

An Employee who is unable to perform the job to which he/she bid to the satisfaction of the Company within thirty (30) workdays after being awarded the job shall be returned to the job classification he/she held at the time of submitting the bid.

#### **Section 9 - Qualifications**

It is agreed that the Company is the sole and exclusive agent to determine the qualifications, skills and abilities of all Employees.

### **ARTICLE X - HOLIDAYS**

#### **Section 1 - Holidays Celebrated**

The following days shall be paid holidays for the purpose of this Agreement:

1. New Year's Day
2. President's Day
3. Martin Luther King Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veteran's Day
9. Thanksgiving Day
10. Christmas Day

Holidays that fall on Sunday will be observed on the following Monday and  
Holidays that fall on Saturday will be observed on the preceding Friday.

#### **Section 2 - Eligible Employees**

To be eligible for Holiday pay, an Employee must be on the active payroll of the Company, and be in a compensable state on the day before and the day after the Holiday.

#### **Section 3 - No Work on the Holidays**

An Employee who is not required to work on the day observed as a Holiday shall receive eight (8) hours pay at his/her straight-time rate of pay, plus shift differential if applicable.

#### Section 4 - Work on the Holiday

An Employee who is required to work on the day observed as a Holiday shall receive time and one-half (1 1/2) times his/her straight time hourly rate for all hours actually worked on that day, in addition to eight (8) hours pay at his/her straight time rate of pay plus shift differential if applicable.

#### Section 5 - Holiday During a Personal Leave Period

If a Holiday occurs during the scheduled vacation of an eligible Employee, the Employee will not be charged a personal leave day for the Holiday and the observed Holiday shall be paid as Holiday pay.

### ARTICLE XI PERSONAL LEAVE

#### Section 1. Personal Leave

<u>Years of Full Time Service</u>	<u>Accrual Rate</u>
Less than two years	12 days
Two to five years	15 days
Five to ten years	18 days
Ten to fifteen years	21 days
Fifteen to twenty years	24 days
Over twenty years	27 days

- a) All full-time regular Employees in active payroll status (i.e., not on WC, A&S, or LWOP) for a minimum of fifteen days during the month shall accrue a prorated amount of personal leave based on the schedules above. Employees will accrue personal leave based on years of full-time service. Personal leave may be taken in thirty (30) minute increments.
- b) Employees may carry over a maximum of 288 hours of personal leave from one calendar year to the next. All personal leave above the maximum carry over will be paid to the Employee in the second payroll of January in the following year. All unused personal leave at the time of termination will be paid to the Employee in the final paycheck following termination.
- c) Employees will begin to accrue leave at the higher rate beginning with the first pay period of the month after the Employee completes the number of years of service required for the higher rate.
- d) Employees desiring to take personal leave must submit the request to his/her manager by 9:00 a.m. the day before leave is desired. Leave will be granted on a first come first serve basis. In some cases where submittals are made at the same time and only one Employee is allowed off due to the need to meet customer requirements, the situation will be determined by seniority. In cases of

emergency or illness, same day requests for personal leave must be made to the Employee's manager for approval at least thirty (30) minutes prior to the Employee's scheduled start time.

## **Section 2 – Catastrophic Leave**

Employees will continue to accrue 2 hours of catastrophic leave per month into their leave account. Current catastrophic leave accumulation will be carried forth into this Agreement. Leave balances will be carried over from one year to the next. Leave usage will be in accordance with Company policy which shall be revised in consultation with the Union.

## **ARTICLE XII - LEAVES OF ABSENCE**

### **Section - Bereavement Pay**

When death occurs in an Employee's immediate family (spouse, mother, father, mother-in-law, father-in-law, son, daughter, brother or sister, step-father, step-mother, step-children, step-brother or step-sister, grandfather, grandmother and grandchildren), an Employee upon request will be excused for up to three (3) consecutive days to include the day of the funeral. Upon the approval of Human Resources, an Employee may reserve one of the days for estate affairs at a later date. The Employee shall receive pay at his/her regular rate, provided it is established that he/she attended the funeral.

### **Section 2 - Severance Pay**

An Employee who is terminated shall be paid one week's pay per year of Service up to a maximum of eighteen (18) weeks (minimum of 1 week will be paid).

### **Section 3 – Jury Duty**

An Employee who is called for and who performs jury duty or who is subpoenaed to appear in court as a witness will be compensated by the Company for the difference between payment received for such compulsory jury duty or compulsory court appearance and the payment the Employee would have received for straight time hours they thereby lose from a normal work schedule computed at the Employee's established hourly base rate as long as the Employee is not party in the legal action.

In order to be paid by the Company for such leave, the Employee must submit to the Human Resources written proof of having served, and the duration of such service.

### **Section 4 - Military Service**

Regular full-time Employees who are members of a military reserve organization and are ordered to temporary training duty are paid the difference for which their straight time pay exceeds their military pay, excluding travel allowances. Payment

is made for up to ten days of training in any calendar year. In support of this payment, Employees must furnish Human Resources a copy of their orders along with a voucher from their paymaster as soon as practical following their training

## **Section 5 - Union Business**

Employees who have an official request for a leave of absence shall be granted leave to participate in Union activities. Unless otherwise allowed by the Employer, no more than two leave requests will be granted for Union activities on any given day.

## **ARTICLE XIII - MANAGEMENT RIGHTS**

The Union recognizes that the Company retains the sole right to manage its business, as such right existed prior to the execution of this Agreement except only as expressly abridged by a specific provision of this Agreement. The Company reserves and retains, solely and exclusively, all of its inherent rights to manage the business including but not limited to:

1. The direction of the working force including the right to hire and decide the number of Employees required and to make rules governing the conduct of the working force which will be applied in a reasonable fashion.
2. Determine work methods and procedures, and to issue, amend and revise policies, rules, regulations, and practices.
3. Require all Employees to observe all safety regulations prescribed by the Company and/or the Government and to work safely.
4. Discharge, suspend, or discipline Employees for just cause.
5. The Company may, if it desires, maintain a variety of skills within its group of Employees to be prepared to have skills and/or supervision for any type of work that may arise.
6. The Union understands the extreme importance of keeping operating equipment, units, and facilities running at all times. The Union also understands that the loss of production and the cost of repairs together create a great loss to Government. Therefore, the Union will encourage and advise the Employees to exhaust every effort, ways and means to perform work of good quality and quantity. The Company and the Union recognize the necessity for eliminating restrictions and promoting efficiency and agree that no rules, customs or practices shall be permitted that limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an Employee shall perform, nor shall there be any restrictions against the use of any kinds of machinery tools or labor-saving devices.

It is understood by the Company and agreed to by the Union, that the Employees of the Company will perform the work requested by the Company without having any concern or interference with any other work performed by any Employees who are not covered by this Agreement doing non-bargaining unit work.

8. The Company's failure to exercise any right, prerogative, or function in a particular way, shall not be considered a waiver of the Company's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the employees provision of this Agreement. In exercising its rights under this Article, the Company shall not violate the provision of this Agreement.

#### **ARTICLE XIV - PERIODIC CONFERENCES**

The parties recognize for their joint benefit, the prosperity and efficiency of the Company are dependent upon their ability to work cooperatively. In order to achieve this, the parties agree to meet periodically, but not less than three times per year, to discuss items of mutual interest. The Company shall designate three (3) representatives and the Union shall designate three (3) representatives to participate in the conference. Union representatives that are the Employees of the Company shall be compensated at their applicable straight time rate for their time spent in conference.

#### **ARTICLE XV - BULLETIN BOARDS**

The Employer will provide a bulletin board or bulletin boards for the use of the Local Union on the property that are in conformity with government regulations and which provide reasonable access by the Union membership to information that the Union wishes to communicate.

#### **ARTICLE XVI - SAFETY**

##### **Section 1**

The Company will comply with all applicable health and safety laws and regulations and the Company and all Employees agree to cooperate toward the objective of eliminating accidents and health hazards. The Company will continue to make reasonable provisions for the safety and health of its Employees during the hours of their employment. The Union agrees that the Company may terminate any Employee covered by this Agreement who intentionally exposes him/herself or any individual to unsafe acts, which could result in serious bodily harm. All Employees must immediately report any work-related injury, as per site policy. An Employee may not be discriminated against for following this procedure.

##### **Section 2.**

The Company and the Union agree to establish a quarterly meeting to cooperate in the elimination of unsafe and hazardous conditions and the improvement of the safety record. The committee will consist of three (3) representatives from management and three (3) representatives from the Union.



### **Section 3.**

All Employees will follow the Company's Safety Operating Policies and Procedures as well as NETL's Environmental Safety and Health Program. Copies of these policies and programs will be available to all Employees on the Local Area Network (LAN) and in the Company's office of Environmental Safety and Health (EH&S). Any new Safety policies and/or procedures established by the Company shall be posted on the bulletin boards.

### **Section 4.**

District and/or International Representatives requesting access to the site to discuss safety matters/incidents with management personnel shall be granted access subject to the routine check in/out procedures.

### **Section 5.**

In cases involving major accidents or fatalities of bargaining unit Employees, the Union steward will be allowed to participate in the Company's investigation of the incident.

## **ARTICLE XVII - NEW EQUIPMENT**

In the event that new equipment or devices are introduced and are to be operated or maintained by bargaining unit personnel, the Company agrees to provide training on such equipment on an as needed basis. The Employees and the manner in which they are trained, will be determined by the Company.

## **ARTICLE XVIII - SUCCESSORSHIP**

The provisions of this Agreement shall be binding upon and to the mutual benefit of the Parties thereto, and to their successors and assigns, except as may otherwise be provided by applicable law or federal regulations.

## **ARTICLE XIX - NO STRIKE - NO LOCKOUT**

1. The Company agrees there will be no lockout of the Union or of Employees represented by the Union during the term of this Agreement.
2. The Union, collectively, and the Employees covered by this Agreement, agree they will not call, engage in or sanction any strike during the term of this Agreement.

## **ARTICLE XX - TEMPORARY/PART TIME EMPLOYEES**

No one may be retained in a temporary or part time capacity while any full-time Employee is on layoff. Temporary/part time Employees may never exceed fifteen percent (15%) of the full time classified workforce even when there is no reduction in force/layoff. Temporary Employees with an anticipated employment of less than six (6)

months will receive \$1.65 per hour in lieu of benefits. Part-time Employees will receive \$1.65 per hour in lieu of benefits. Temporary Employees shall not be employed for more than six (6) consecutive months.

## **ARTICLE XXI - CONTINUANCE OF EMPLOYER PROVIDED APPAREL AND TOOLS**

The Employer agrees to continue the practice of providing Employees with certain wearing apparel, tools and safety devices including, but not limited to, steel toed boots and shoes, uniforms, safety glasses, gloves, and other items previously provided to the Employee for his or her use in carrying out their duties. In the event that the government, for whatever reason, decides to discontinue certain programs that provide any of these items the Union will immediately negotiate with the Employer with respect to the impact that such changes have had on it's membership.

## **ARTICLE XXII - HEALTH BENEFITS**

### **Section 1 - Health Care**

Plan general outline attached - Plan carrier is at the discretion of the Employer, but changes in the level of benefits are subject to collective bargaining.

#### **(a) First Full Year of the Agreement - January 2003 to January 2004**

Health care rates shall be set at:

<b>Pittsburgh:</b>
<b>\$104.85 per month for full family coverage</b>
<b>\$89.23 per month for two party coverage</b>
<b>\$33.29 per month for single coverage</b>

#### **(b) Second and Third Full Year of the Agreement - January 2004 to December 2005**

In the event that health care costs increase, the Employer and Employees shall share the cost increase, such that the Employer shall pay eighty-five percent (85%) of the cost increase and Employees shall pay fifteen percent (15%) of the cost increase.

### **Section 2 - Waiver of Health Care Benefits**

Employees may opt to waive health insurance coverage and receive a waiver paid on a bi-weekly basis. Employees must furnish proof of other health coverage to qualify for the waiver. Employees may receive the following:

Individual - \$650.00 per year

Family - \$650.00 per year

## **Article XXIII - DENTAL PLAN**

The Dental Plan currently in effect will continue with a rate of \$15.00. Such rate shall continue for the life of this Agreement.

## **ARTICLE XXIV SCHEDULE OF OTHER BENEFITS**

### **Section 1 - Life Insurance and AD&D**

The Company will provide Life insurance as currently stated in the PFSI policy, equal to two (2) times the Employee's annual salary rounded up to the next thousand dollars. The Company will also provide AD&D as currently stated in the PFSI policy, equal to two (2) times the Employee's annual salary rounded up to the next thousand dollars. The rates for dismemberment/loss of sight etc. will also follow the current PFSI policy.

### **Section 2 - Long Term Disability**

Employees may participate in the Company's Long Term Disability (LTD) Insurance Program as described in the PFSI LTD policy.

### **Section 3 - Retirement/401K Savings Plan**

The Employer agrees to establish for each represented Employee an individual 401K Savings and Investment Plan. The Plan shall be established and handled by a reputable investment company and administered by them under arrangements with the Employer pursuant to the following:

1. The 401K Savings and Investment Plan will be funded on behalf of each Employee covered under the terms of this Agreement with respect to one or both of the following avenues;
  - (a) Employer contributions only up to a certain yearly maximum
  - (b) Combination of Employer contribution up to a certain yearly maximum and Employer contribution for each Employee dollar set aside into the 401K savings and Investment Plan.
2. The Employer will be responsible for putting into an Employee's account the amount of fifty cents (\$.50) for each hour worked in a given year up to a maximum of one thousand dollars (\$1000) per contract year. This contribution by the Employer shall be made without respect to any contributions made by the Employee.
3. In addition to the contributions made by the Employer under (2) above, an Employee may elect to set aside a portion of his/her pay each pay period to also be placed into their 401K Savings and Investment Plan.

- (a) Should the Employee choose to apply a portion of his/her pay as outlined in (3) above, the Employer, in addition to the contributions outlined in (2) above will also contribute fifty-five cents (\$.55) for every dollar set aside by the Employee up to six (6) percent of his/her salary.
- 4. The Employer agrees that it will bear the costs associated with the fees charged by the financial advisors who are handling the 401K Savings and Investment Plan for the Employer pursuant to this Agreement.
- 5. The 401K Savings and Investment Plan shall offer a diverse selection of investment vehicles in which an Employee may choose to invest his/her monies.
- 6. A year within the Plan outlined herein will run from anniversary date to anniversary date of the effective date of this collective bargaining Agreement.

**Section 4 - Dependent Life Insurance Plan/Supplemental Life Insurance Plan**

Employees may participate in the Dependent/Supplemental Life Insurance Program as described in the PFSI policy.

**Section 5 - Accident & Sickness/Short Term Disability**

The Company will provide A&S insurance as stated in the current PFSI policy, equal to two-thirds (2/3rds) of the Employee's weekly base rate up to a maximum of eight hundred (\$800) dollars per week.

**Section 6 - Awards Fees Distribution**

Bargaining unit members shall participate in twenty-five (25%) percent of the Awards Fees Distribution program.

**ARTICLE XXV - TERM OF AGREEMENT**

This Agreement shall take effect January 2003, and shall remain in effect through December 31, 2005 and shall continue in effect from year to year thereafter, unless changed or terminated. Either party desiring to change or terminate this Agreement must notify the other in writing at least sixty (60) days prior to January 1, 2006.

IN WITNESS WHEREOF, each of the parties signatory hereto has caused this Agreement to be signed this 1<sup>st</sup> Day of JAN., 2003.

  
For the Union

  
For the Employer

Date 1-1-03

Date 1/1/03

**APPENDIX A**

**Wages**

- On January 1, 2003, all Employees covered by this contract shall receive a seventy-five cent (\$0.75) increase in their wages.
2. On January 1, 2003, the Employer shall remit to each Employee covered by this contract a check in the amount of three hundred dollars (\$300.00) less applicable withholdings representing a Fringe Benefit Payment.
3. On January 1, 2004, all Employees covered by this contract shall receive a seventy-five cent (\$0.75) increase in their wages.
4. On January 1, 2005, all Employees covered by this contract shall receive a seventy-five cent (\$0.75) increase in their wages.

<b><u>Classification</u></b>	<b><u>1/01/03</u></b>	<b><u>1/01/04</u></b>	<b><u>1/01/05</u></b>
<b>Tech I</b>	\$15.77	\$16.52	\$17.27
<b>Tech II</b>	\$17.39	\$18.14	\$18.89
<b>Tech III</b>	\$19.78	\$20.53	\$21.28
<b>Tech IV</b>	\$22.23	\$22.98	\$23.73
<b>Tech V</b>	\$25.08	\$25.83	\$26.58

**APPENDIX B**

**MEMORANDUM OF UNDERSTANDING BETWEEN PFSI AND UMWA  
LOCAL 1914 11/30/00**

Engineering Technician I (ET-1) and Engineering Technician (ET-2) will follow the agreed upon advancement timeline

**ET-1 to ET-2**

Advancement to ET-2 will be based on one calendar year of satisfactory job performance. Unsatisfactory performance must be documented and may delay advancement. Job performance will be evaluated quarterly and the individual will be counseled.

**ET-2 to ET-3**

Advancement to an ET-3 will occur after the individual has five years of satisfactory site experience. Previous experience/education can be substituted for up to one year of site experience. Unsatisfactory job performance must be documented and may delay advancement. Job performance will be evaluated quarterly and the individual will be counseled.

Any delay in advancement under this item may be challenged pursuant to Article 5, Grievance Procedure of the Collective Bargaining Agreement.

2. Any level technician can work independently on tasks within his job description, for which he is qualified, with periodic instruction and/or guidance from higher level technicians or supervisors. No technician on any level requires constant supervision.
3. Any technician can train, instruct and provide guidance, in any area that he is qualified, to other technicians.
4. Field fitting and dimensional changes do not constitute design.
5. A group of two or more technicians at any level can work together as a team on tasks that they are competent to perform. The higher-level technicians can/should provide guidance to the team. A lower level technician can work as a helper with a higher level technician on tasks in the higher level.
6. ET-1 and ET-2 may be assigned higher level work for the purpose of training and qualification for advancement. Once an ET-3 and above has documentation of qualification, the work performed constitutes out of classification work within the guidelines of the contract.

The Company and the Union agree that training programs should be instituted to give all employees the opportunity to increase their value to the company and the customer.

The number of ET- 4 & 5 positions required is based on the operational needs and skill levels required as determined by management.

## Pittsburgh Position Descriptions

**Title:** Engineering Technician

30/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High School diploma/GED or equivalent, and no job-related experience. Good communication and analytical skills.

**Purpose and Scope:**

Under guidance/training from a higher level technician or supervisor or using detailed procedures/work instructions, performs simple and routine tasks or tests within, but not necessarily limited to a prescribed area of expertise. Work is checked in progress or on completion. Periodically, technician is assigned work above classification for the purpose of using experience gained for future assignments and advancement opportunities. Duties will be varied.

**Responsibilities and requirements can vary between operating and support groups. The bullet items listed below are examples of skills that may be required:**

1. Assemble or install equipment or parts requiring simple wiring, soldering, or connections, such as:
  - Install conduit, pull wire and terminate wire
  - Replace fuses, CB, overloads, electrical devices
  - Mount transmitters, thermocouples and gauges
  - Fabricate panels and assemble control bays
2. Perform simple or routine tasks or tests, such as tensile or hardness test, sample grinding, or sieve analysis, such as:
  - Transferring coal/or other bulk solids
  - Perform bulk density, crush strength and attrition testing
  - Prepare feedstocks (mix, blend)
  - Fill and weigh drums
  - Painting, labeling
3. Operate and adjust simple test equipment, and record data, such as:
  - Calibrate instruments such as gauges, balances and sensors as qualified
  - Operate Digital Voltage Meter
  - Use calipers and torque wrenches
4. Gather and maintain specified records of engineering data, such as:
  - Test data sheets, drawings, MSDS, P&ID's
  - Data log books
  - Perform Inventories
5. Perform computations by substituting numbers in specific formulas, such as:
  - Iso kinetic sampling and calculations
  - Release analysis, moisture analysis, water quality analysis
  - Engineering units conversion
  - Simple electrical calculations



6. Assist with the installation, fabrication, modification, and operation of test equipment used on special projects, such as:
  - Operate portable power tools (drills, saws, grinders, etc.)
  - Operate pipe threader, drill press, band saws, lathe, jig saw and other stationary equipment
  - Install tubing, piping, gauges, valves and fittings
  - Operate oxy-acetylene torch
 Perform routine facilities maintenance and repair and support higher level technicians in performing non-routine facilities maintenance and repair.
8. Perform other position related duties as assigned or requested.

#### **Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

#### **Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

**Title: Engineering Technician 2**

30/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent and at least three years of job-related experience, or one year satisfactory performance at an Engineering Technician 1 level. Refer to the Memorandum of Understanding dated 11/30/00 for specific details. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Under guidance/training from a higher level technician or supervisor, performs generally standardized tasks or tests involving a sequence of related operations, within, but not necessarily limited to a prescribed area of expertise. Follows standard work methods on recurring assignments, but receives explicit instructions on unfamiliar assignments. Technical adequacy of routine work is reviewed on completion; non-routine work may also be reviewed in progress. Will perform the essential responsibilities of lower level technicians and will instruct/train other technicians. Periodically, technician is assigned work above classification for the purpose of gaining experience for future assignments and advancement opportunities. Duties will be varied.

**Responsibilities and requirements can vary between operating and support groups. The bullet items listed below are examples of skills that may be required.**

1. Assemble or construct simple or standard equipment or parts, such as:
  - Assemble flow loop components for completion.
  - Construct project I/O hardware panels.
  - Install and fabricate tubing and piping runs per the P&IDs.
2. Service or repair simple instruments or equipment, such as:
  - Repair or replacement of pumps and motors used on research projects
  - Repair or replacement of thermocouples, gauges, switching devices, and valves.
  - Troubleshoot and repair or replacement of electrical devices and I/O hardware
3. Conduct a variety of tests using established methods, such as:
  - Perform leak and hydro testing procedures
  - Perform load testing on electrical circuits and panels
  - Perform water analyses for conductivity and hardness
4. Prepare test specimens, adjust and operates equipment, and records test data, such as:
  - Perform sizing analysis and generate size fractions for testing
  - Calibrate and adjust test instruments such as gauges, balances, sensors and pumps as qualified
  - Record data from project operations systems
5. Extract engineering data from various prescribed standardized sources, such as:
  - Retrieve data from project operations software
  - Retrieve and use data from P&IDs, Instrument Indexes, logic drawings
  - Retrieve data from material test data sheets and instrument certification sheets
  - Record data from preventive maintenance performed on equipment

6. Present the data in prescribed form, such as:
  - Organize data in tabular form
  - Perform sampling calculationsPerform a wide variety of duties in the installation, modification, and operation of test equipment used on special projects, such as:
  - Machine or fabricate replacement parts for research projects
  - Perform basic welding on non-critical applications as certified
  - Install electrical and instrument equipment to research projects.
  - Install spool pieces, blanks, and piping components
  - Install/modify tubing, piping, gauges and fittings
  - Provide operations support to research projects, including data recording and sampling
8. Perform basic preventive maintenance (i.e. visual inspections, lubrication, filter changing, cleaning, etc.).
9. Perform other position related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure

to within acceptable levels

3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities

Title: Engineering Technician 3

30/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent and at least five years of job-related experience, or five years satisfactory site performance. Refer to the Memorandum of Understanding dated 11/30/00 for specific details. Specific training, certification, or licensing and advanced knowledge in the particular area of specialization, plus a broad knowledge of other disciplines. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Performs routine and non-routine tasks or tests of some complexity and variety, within, but not necessarily limited to a prescribed area of expertise. Receives initial instructions, equipment requirements, and advice from supervisor or higher level technician as needed. Performs recurring work independently, and the technical adequacy or conformity of routine work is reviewed on completion. Non-routine work may be reviewed in progress. Will perform the essential responsibilities of lower level technicians and can instruct/train other technicians. Periodically, technician can be assigned work above classification for the purpose of gaining experience for future assignments and advancement opportunities. Duties will be varied.

Responsibilities and requirements can vary between operating and support groups. Listed below are examples of responsibilities that may be required.

1. Construct components, sub-units, or simple models or adapt standard equipment. May trouble shoot and correct malfunctions, such as:
  - Fabrication and welding of air, nitrogen, and fuel distribution systems
  - Fabrication of burner nozzles and transition pieces
  - Installation of Tail gas sampling systems
  - Installation of motor and gear reduction units, performing shaft alignment to unit
  - Investigate system sources for proper pressures
  - Investigate non-operating motors and pumps and make operational
2. Follows specific layout and scientific diagrams to construct and package simple devices and sub-units of equipment, such as:
  - Fabrication and installation of vessels
3. Select or adapt standard procedures or equipment, using fully applicable precedents.
4. Select, setup, and operate standard test equipment and records test data, such as:
  - Perform pre-operation safety checks to units, correct deficiencies and document
  - Perform operation and documentation on testing unit
  - Operate sampling equipment for monitoring gas streams
5. Extract and compile a variety of engineering data from lab/test rig notes, manuals, etc.
6. Process data and identify errors or inconsistencies
7. Select methods of data presentation
8. Assists in design modification by compiling data related to design, specifications, and

- materials, which are pertinent to specific items of equipment or component parts.
9. Develop information concerning previous operational failures and modifications
  10. Setup, operate, and maintain service support equipment and record data in logs
  11. Perform major planned preventive or major overhaul maintenance using diagnostic equipment and equipment materials.
  12. Perform other position related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.

3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.



**Title:** Engineering Technician 4

30/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent, and at least seven years of job-related experience. Specific training, certification, or licensing and advanced knowledge in the particular area of specialization, plus a broad knowledge of other disciplines. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Performs routine and non-routine tasks or tests of substantial complexity and variety where operational precedents may sometimes not exist. Performs recurring and non-routine work independently, and the technical adequacy or conformity of non-routine work is reviewed on completion. Such assignments are typically part of broader assignments, and they may need to be screened to eliminate and resolve unusual design problems. Will be tasked to plan and estimate requirements for such assignments. Will perform the essential responsibilities of lower level technicians and will instruct/train other technicians. Periodically, technician is assigned work above classification for the purpose of gaining experience for future assignments and advancement opportunities. Duties will be varied.

**Essential Responsibilities/Requirements:**

1. May be assigned to independently lead and coordinate the activities on a task or shift, which may include;
  - Recognize and correct unsafe practice and conduct
  - Ensure compliance and correct discrepancies with area safety conditions, and notify management if problems can not be resolved
  - Ensure that policies and procedures are being followed
2. Develop or review designs by extracting and analyzing a variety of engineering data
3. Perform a wide variety of duties of complex nature in the installation, modification, and operation of electronic equipment if qualified.
4. Perform market surveys for equipment as per the engineering requirements, and provide information to higher level technician, engineer, or management.
5. Assure that the daily operational log is maintained
6. Perform other position-related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use various types of respirators, to include self contained breathing units.
3. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
4. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
5. Work in a confined area may be required.

6. Operation of motor vehicles including forklifts may be required.
7. Vision requirements include the ability to focus and depth perception
8. The ability to respond to visual and audio alarms is required.
9. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
10. Hand eye coordination is required.
11. Operate cranes and hoists
12. Will be trained in basic first aid and rescue
13. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
14. May include shift work.
15. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

**Title:** Engineering Technician 5

30/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent, and at least nine years of job-related experience. Specific training, certification, or licensing and advanced knowledge in the particular area of specialization, plus a broad knowledge of other disciplines. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Performs non-routine and complex assignments involving responsibility for planning and conducting a complete project of relatively limited scope or a portion of a larger and more diverse project. Conducting these assignments will involve estimating and scheduling resources and adapting plans, techniques, designs, or layouts. Will be necessary to contact personnel in related activities to resolve design and layout problems and to coordinate the work. Will perform the essential responsibilities of lower level technicians and will train/instruct lower level technicians. Duties will be varied.

**Essential Responsibilities/Requirements:**

1. Investigate accidents with Safety Officer, complete and forwards accident/incident reports to management.
2. Provide weekly safety contacts to assigned personnel.
3. Participate in the interviewing of candidates, and complete a non-subjective interview appraisal
4. Provide non-subjective input to management in the performance evaluations of engineering technicians assigned.
5. Provide non-subjective input to management for personnel bidding on job postings.
6. Ensure work order estimates and closeouts have been completed by the assigned lower level technicians and forwarded to management.
7. Works with management in coordinating weekly planning and work schedules.
8. Perform other position-related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
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11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
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3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**PARSONS FEDERAL SERVICES INC.  
(Morgantown Site)**

**AND THE**

**UNITED MINE WORKERS OF AMERICA**

**Local 717**

**JANUARY 1, 2003, THROUGH DECEMBER 31, 2005**

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## ARTICLE I – PURPOSE

It is the intent and purpose of Parsons Federal Services Inc. (“PFSSI” or the “Company”) and the Union to establish, through this Agreement, the wages, hours of work, and conditions of employment about which the Company and the Union bargained for the Employees of the Company in the unit defined herein; to provide a procedure for processing disputes between the Company and the Union as to the interpretation and application of the provisions of this Agreement; and generally to govern the relationship between the Company and the Union and its members.

2. The Union recognizes the necessity to achieve efficiency in production and acknowledges that it is the further purpose of this Agreement to prevent interruptions of work and interference with the efficient operation of the Company’s business. It is the intent and purpose of the parties to promote harmony between the Company, its Employees, and the Union for the efficient and successful operation of the Company’s contract with the government so that the Employees and the Company may mutually benefit.
3. Except as specified in this Agreement, the Union and the Employees it represents are not waving rights which exist under the National Labor Relations Act to bargain over Employees’ wages, hours and working conditions. Nor do the Union and the Employees it represents waive any right to challenge any governmental action that would dictate a change in a term and condition of employment provided for under this Agreement.
4. The Company and the Union mutually agree not to discriminate in any way against any Employee with respect to hiring, compensation and terms or conditions of employment because of applicable laws relating to the disabled and Vietnam-era Veterans. Neither the Company nor the Union shall discriminate against any Employee on the basis of race, creed, national origin, gender, age, and political activity or otherwise.

## ARTICLE II - SCOPE AND COVERAGE

1. The Company hereby recognizes the Union as the exclusive bargaining representative for the purpose of bargaining collectively as required by Section 8D of the NLRA with respect to wages, hours and other conditions of employment, for the Company’s Employees regularly assigned to the following bargaining unit, all full-time and regular part-time Engineering Technicians I, II, III, IV and V, employed by the Employer at its Morgantown, WV and Pittsburgh, PA Facility on the Research Facility Operations Contract or any successor contracts.
2. Managers and Supervisors shall not perform bargaining unit work except in cases of emergency or Employee training/instruction.

## **ARTICLE III - REPRESENTATION**

### **Section 1 - Representative**

The Representative of the Union shall have access to the shops and office of Parsons Federal Services Inc. at NETL for the purposes of adjusting disputes, investigating working conditions, and ascertaining that the Agreement is being adhered to, providing there is no interruption of the Company's business and providing further that (a) the Union Representative notifies the Human Resources Representative in advance of any visit and (b) prior to entering any facilities under the control of the Company, the visiting representative reports to the Human Resources Office or the Operational Manager's Office in their absence.

### **Section 2 - Shop Stewards**

The Company recognizes the right of the Union to designate one (1) Steward and one (1) Alternate.

- (a) The authority of the Steward so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:
  - (1) The investigation and presentation of grievances in accordance with the provisions of this collective bargaining Agreement.
  - (2) The transmission of such messages and information as shall originate with, and are authorized by the Union or its officers.

### **Section 3 - Scope of Stewards' Union Activities**

The Stewards' Union activities on Company time shall fall within the scope of the following functions:

- (a) To investigate a complaint or grievance and to present a complaint or grievance to an Employee's immediate manager in an attempt to settle the matter for the Employee or group of Employees who may be similarly affected.
- (b) To meet by appointment with an appropriate manager or other designated representative of the Company, when necessary, to adjust grievances in accordance with the Grievance Procedure of the Agreement.
- (c) The Steward shall be allowed to perform these duties during the Steward's working hours without loss of compensation. The performance of these duties shall be limited to a reasonable amount of time per shift.
- (d) The duties specified above shall not relieve the Steward of his/her duties, and obligations as an Employee of the Company, and he/she shall continue to be subject to all rules, regulations and procedures applicable to other Employees. The Steward shall notify his/her immediate manager before leaving the work area to conduct Union business.



#### **Section 4 - Checkoff**

The membership dues, including initiation fees, and assessments of the United Mine Workers of America and its various subdivisions, credit, voluntary COMPAC contributions and other voluntary deductions, the Union-sponsored group auto insurance, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employers covered by this contract and shall be remitted by the Employers to the properly designated officers of the Union for distribution to its various branches. Such remittance shall be made within 30 days of the date such amount has been checked off. The Employer shall also submit an itemized statement showing the name of each Employee, his/her Social Security number, hours worked, and the amount checked off for dues, initiation fees, and assessments. Such itemized statement shall be made within 60 days of the date the check-off has been made, and shall include a list of Employees from whom dues, initiation fees and assessments have not been collected.

In order that this section may become effective and operate within the limitations of the Labor-Management Relations Act of 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the respective Employers, and the Employers agree to aid, assist and cooperate in obtaining, written authorizations from each Employee so employed. Upon the presentation to the Employers of such authorizations in such reasonable form as time and circumstances may allow, said Employers shall make deductions so authorized and deliver the same to the designated District officer of the Union or to such authorized representative as may be designated by the Union.

#### **Section 5 - Notification**

The Union shall notify the Company of the amount of dues to be withheld by the Company, and shall advise the Company in writing at least two (2) months prior to any change in the amount to be withheld.

#### **Section 6 - Membership**

It is agreed that all Employees coming under the terms of this Agreement shall be required to make application to, and become members of, the Union within thirty (30) days of their employment. In the event an Employee does not become a member of the Union within the time frame prescribed above, the Union will approach management and request that the Employee be terminated from any employment which is covered under this Agreement. The Union agrees to hold the Company harmless from any action that may come about as a result of the application of this section.

## **ARTICLE IV - GENERAL WAGE PROVISIONS**

### **Section 1 - Wage Rates**

The hourly rates for Employees covered by this Agreement shall be as set forth in Exhibit "A". Wages shall be paid bi-weekly.

### **Section 2 - Shift Differentials**

The Company shall pay a shift differential of 5% for the second shift and 7% for the third shift.

### **Section 3 - Out of Classification Work**

When a qualified Employee is specifically assigned to and works independently for a period of three (3) hours or more in a higher job classification, the Employee will receive the rate of the higher classification for the duration of his/her performance of the job.

### **Section 4 - Temporary Assignments**

Every reasonable effort shall be made to keep an Employee at work on the job duties normally and customarily a part of his regular job.

### **Section 5 - Schedule Changes**

An Employee's schedule shall not be changed for the explicit purpose of avoiding overtime.

### **Section 6 - Tuition Refund**

Tuition refund will be provided in accordance with PFSI's corporate policy at the time of this Agreement.

### **Section 7 - Educational Assistance**

The Company agrees to provide reimbursement of lost wages and expenses for Employees attending and successfully completing courses offered by the Union and with prior approval by Company (e.g. Safety programs, labor management cooperative programs, etc.).

## **ARTICLE V - GRIEVANCE PROCEDURE**

**Section 1.** All grievances that may arise will be handled in the following manner. Any written grievance must be filed within five (5) working days of the event given rise to the grievance. The five (5) days shall be considered from the time the grievant should have reasonably known of the grievance. In cases involving dismissals for cause, the grievance may be instituted at step three. In all steps, the grievant shall have the right to be present and at his/her request be accompanied by his/her Union representative.

**Step 1** Prior to processing any written grievance, any Employee who believes he has a grievance must discuss it with his immediate manager, with the option of having his steward present. If the Employee is dissatisfied with the answer given by his manager or no answer is given within five (5) normal working days, Step 2 will be followed.

**Step 2** The Employee and his steward shall present to the Human Resources Representative a written grievance form which has been approved by the Union and the Company stating what the grievance is and the remedy sought. If the Human Resource representative's decision is not acceptable, or is not given within five (5) normal workdays, Step 3 will be followed.

**Step 3** The grievance shall be forwarded by the Union steward to the Operations Manager or his designated representative within five (5) normal workdays after the Human Resource Representative's unacceptable written decision, or failure to give a decision. The Operations Manager shall meet with the appropriate district representative or his designated representative within five (5) days of receipt of the grievance. If the Operation's Manager's decision is not acceptable or is not given within five (5) normal workdays, Step 4 will be followed.

**Step 4** The Union may, no later than five (5) working days after receipt of the Company's decision in Step 3 submit the matter to arbitration by requesting that the Federal Mediation and Conciliation Service submit a list of five (5) names of arbitrators, from which the Company and the Union shall choose an impartial arbitrator to decide the matter. Following receipt of the list of names of arbitrators the parties shall then alternately strike the names from the panel and the name remaining shall be the Arbitrator in the case. The determination of which Party is to strike first shall be determined by a coin flip. Striking shall take place within seven (7) days of receipt of the arbitrators list.

## **Section 2**

In arbitration proceedings, the expense of the impartial Arbitrator shall be shared by both parties. The parties will be responsible for paying their own representatives and witnesses.

## **Section 3**

All arbitration hearings shall be held at a mutually agreed upon neutral location with the Company and the Union agreeing to equally share expenses incurred in the hearing room.

## **Section 4**

The findings of the arbitrator shall be final and binding on all parties.

## **Section 5**

All time limits stated in this article shall be treated as jurisdictional in nature and the failure to follow any of the set times limits shall result in the grievance being void and waived and the matter shall end without resort to arbitration. A normal workday is defined as any day on which a bargaining unit Employee is at work Monday through Friday, excepting holidays.

## **Section 6**

Except by mutual written agreement to the contrary, only one grievance shall be taken to arbitration at any time before the same arbitrator.

## **Section 7**

The impartial Arbitrator shall only have jurisdiction and authority to determine the meaning, application of, or compliance with provisions of this Agreement and shall not have jurisdiction or authority to add or detract from or alter in any way such provisions or any rules of discipline attached hereto.

## **Section 8**

Time frames pursuant to discharge shall be commensurate with provisions of Article VII Section 1, Discharge/Arbitration of this Labor Agreement. In these cases arbitrators shall be selected immediately by the parties pursuant to Article V Section 1, Step 4 Grievance Procedure as it pertains to the Arbitrator selection process and the actual arbitration shall be held within seven days from the time it is referred to arbitration at Step 4.

## Section 9

Time limitations may be waived by mutual agreement of both parties.

## Section 10

The Company and the Union may refer grievances to non-binding mediation based on mutual consent.

## **ARTICLE VI - DISCIPLINARY PROGRAM AND DISCHARGE**

### **Disciplinary Program**

- 1.) No one may be disciplined or discharged without just cause. Discipline will be applied without discrimination on account of race, color, religion, gender, age, or national origin, disability or veteran's status. The procedure will be carried out uniformly in accordance with the following steps:

1. First Offense Verbal warning, record on file with Manager and Local Steward.

2. Second Offense Written warning with record on file with the Human Resource Office, copy given to the Local Union Steward.

3. Third Offense Two working days off without pay, record on file with the Human Resources Office, copy to the Local Union Steward.

4. Fourth Offense Discharge

In case of serious offenses, which affect customer relations (and thus jeopardize the jobs of fellow workers), or which could result in unlawful treatment, injury or death, to the Employee, fellow workers, or the public, the Employer shall have the right to bypass any or all of the progressive discipline steps and may discipline or discharge the Employee immediately subject to the arbitration procedure. These offenses shall include, but shall not be limited to the following;

1. Possession, use, sale or distribution of illegal substances and/or intoxicating beverages on the work site.
2. Bringing firearms or other weapons on the job.
3. Intentional theft of Government, Employer or Employee property.
4. Intentional destruction of Government, Employer or Employee property.
5. Intentional fraudulent activity.
6. Intentional falsification of Government or Company documents.
7. Sexual harassment.

Disciplinary actions will remain in an Employee's personnel file for a maximum period of one year unless otherwise designated by the Company.

### **Section 1 - Attendance Control**

Excessive use/abuse of absenteeism or tardiness increases costs, creates an undue hardship on fellow Employees and limits ability to effectively plan and accomplish customer goals. Any Employee requesting time off must have prior approval of their manager. An unexcused absence is an absence that does not have prior approval of management or an absence without sufficient and appropriate documentation upon return to work. Employees absent for three (3) consecutive working days without a valid excuse or proper authorization may be considered to have voluntarily quit. Otherwise, the policy toward absenteeism will be as follows:

1. Unexcused absence or tardy / first occurrence / Verbal warning.
2. Unexcused absence or tardy / second occurrence / Written warning.
- 3.) Unexcused absence or tardy / third occurrence / 3 day suspension.
- 4.) Unexcused absence or tardy / fourth occurrence Termination.

All disciplinary actions will remain in the Employee's personnel file for a period of one year.

## **ARTICLE VII - DISCHARGE/ARBITRATION**

### **Section 1 - Discharge**

In cases of Discharge, the Company shall notify the Local Union President and/or Union stewards of the discharge and its reason for such action in writing within two (2) working days. An Employee who claims he/she has been discharged without just cause must notify the Union within two (2) working days following the discharge. Notice that a discharge is being grieved must be made to the Company, in writing by the Union, within five (5) working days from the date of discharge. Discussions between the Company and the Union Representative concerning the discharge shall be considered Step 3. If not settled in Step 3, all discharges will be called in for immediate Arbitration.

## **ARTICLE VIII - HOURS AND OVERTIME**

- Section 1.** When a shift is needed to respond to customer need, the Company will provide notice of a shift change to affected Employees no later than 2:00 p.m. Thursday in the week prior to the proposed shift change.

**Section 2.** A negotiated overtime distribution policy and overtime tracking roster will be posted on the appropriate bulletin boards.

**Section 3.** The workday shall begin at 12:01 a.m. and shall end at 12:00 midnight. The third shift, which normally begins at 11:00 p.m., will be considered the first shift of the following day.

**Section 4.** For payroll purposes the work week shall begin at 12:01 a.m. Saturday and shall end at 12:00 midnight the following Friday.

**Section 5. Regular Work Week**

The regular work week for Employees will consist of five (5) workdays during the period Monday through Friday, with two (2) consecutive days off (Saturday and Sunday), except for shift work which may be five (5) consecutive workdays during the period Monday through Sunday with two (2) consecutive days off.

**Section 6. Regular Workday**

The regular workday for Employees will consist of an eight (8) hour workday including one-half (1/2) hour unpaid meal and two (2) 15 min. paid break periods. For Employees working a Regular Work Week, work in excess of eight (8) hours shall be paid at time and one half. First shift shall be 7:00 a.m. until 3:00 p.m. Second shift shall be from 3:00 p.m. till 11:00 p.m. Third shift shall be 11:00 p.m. until 7:00 a.m.

**Section 7. Overtime Distribution Policy**

a) Purpose

The Company will make every reasonable effort to divide work among the Employees by classification and shift as impartially as is practicable. In doing this, it is recognized that the Company will take into account the qualifications of Employees for the job to be performed and efficient operation.

b) Procedures

**Step 1** In assigned overtime, Employees shall perform the overtime work required. Employees actively working the task requiring overtime shall perform the overtime work required. In the event of extenuating circumstances an Employee is unable to perform overtime work assigned, the overtime assignment shall be referred to the overtime distribution list for equitable distribution.

**Step 2** Employees will be selected for the overtime on the basis of the lowest overtime credited hours, provided they are qualified to perform the work.

**Step 3** The necessity for the Company to work overtime to provide rapid response to emergencies is recognized in order to meet customer service

requirements. It is expected that Employees will continue to cooperate in working overtime for the Company's and Employee's best interests. If there is an insufficient number of Employees to perform the required work, Employees will be selected on the basis of their ability to perform the job in the reverse order of seniority. The least senior qualified person will be required to perform the needed work.

c) **Scheduled Overtime**

Employees who do not want to be considered for overtime work will declare that fact and it will be so designated by the Manager. Overtime will not be tracked for that Employee. If these Employees desire to return to the distribution of overtime, they will be credited as having the highest overtime, plus one hour, in their classification.

d) **Emergency Overtime**

Emergency overtime will be equitably distributed when possible. Emergency overtime will be recorded separately, but included in the total overtime hours.

e) **New Hires**

On the hire date, new Employees will be credited with the highest overtime hours, plus one hour in the classification for distribution purposes.

**Record Keeping**

A written record of overtime worked by Employees will be maintained by the Employee's Manager. The overtime record will indicate the Employee's name and the date. Employees will be credited with overtime worked by recording the actual number of overtime hours worked. Employees unable to work overtime, when requested, shall be deemed to have worked the overtime hours actually worked on the task for distribution of overtime purposes.

Should the Company and the Union determine that an Employee was improperly denied overtime opportunities, the Company shall provide the Employee with future available scheduled overtime, provided the Employee is qualified for the job to be done and it does not disrupt efficient operation.

g) **Time Sheets**

This policy is for distribution of overtime hours worked. For pay purposes, overtime hours are the hours recorded on the time sheet.



h) **Implementation of Policy**

To begin the overtime distribution process the Company will provide a report of year-to-date overtime worked. These hours will be transferred to an Overtime Distribution Record form.

**Section 8 - Four-Ten Hour Shift**

The Company may elect four/ten hour work shifts, either Monday through Thursday or Tuesday through Friday in order to meet the customers' needs. The Union and affected Employees will be given five working days notice prior to the commencement of the shift. The four/ten shifts will originally be established on a volunteer basis. If there are more volunteers than needed the Employees with the most seniority will be awarded the four/ten's provided they have the necessary skills to perform the job. If there are not enough Employees volunteering, the Employees with the least seniority will be required to work the four/ten's provided they have the necessary skills to perform the job. On this four/ten shift Employees will be paid time and one half of their straight time hourly rate for all hours in excess of ten (10) hours per day and forty (40) hours in a week.

**Section 9 - Altered Work Schedule (AWS)**

The Company may assign Employees an altered work schedule (AWS) consisting of eight (8) hours between the hours of 6:00 a.m. and 6:00 p.m. to meet customer requirements. At least three (3) days notice must be given before a new schedule is implemented. Employees may request an AWS outside of the normal work hours/days for personal needs. The AWS must ensure that customer support is maintained.

**Section 10 - Overtime Calculations and Premium Days**

- a. Time worked on Saturday and Sunday shall be paid at time and one-half (1-1/2) of the Employee's rate, and time worked on Holidays shall be paid at two and one half (2 ½) times the Employee's rate.
- b. Holidays and personal leave shall be included as time worked for the purpose of calculating overtime.
- c. There will be no "pyramiding" of overtime allowed.

**Section 11 - Call Out Pay**

An Employee called back to work after having completed his/her regular shift and gone home, shall receive a minimum of four (4) hours at their straight time rate of pay or pay for actual hours worked whichever is greater.

**Section 12 - Show Up Pay**

An Employee reporting for work at his regular scheduled starting time and for whom no work is provided, shall receive three (3) hours show up time unless

notified by the Company at least three (3) hours prior to their regularly scheduled starting time not to report to work.

### **Section 13 - Administrative Leave**

When the site is closed due to weather or other catastrophic reasons, Employees will receive administrative leave only when reimbursement is allowed by the DOE.

## **ARTICLE IX- SENIORITY**

### **Section 1. – Seniority**

- a) Site seniority is defined as a Bargaining Unit Employee's continuous service at the site with Parsons Federal Services Inc. and all predecessor employers.
- b) Bargaining unit seniority is defined as a bargaining unit member's continuous service earned under this Labor Agreement or predecessor Labor Agreement.
- c) The Company shall supply the Union with a job classification and site seniority list of the Employees covered by this Agreement. Such list(s) shall be revised annually.
- d) A probationary period of ninety (90) days will be observed for each new Employee during which time the Company will make specific and periodic evaluations of the Employee's qualifications, skills and abilities. During this probationary period, an Employee shall be considered as having no seniority rights, provided that upon completion of the probationary period, an Employee shall be entitled to seniority rights as measured from an Employee's employment date. During the probationary period, a new Employee may be discharged in accordance with Company Policy and procedure without recourse to the grievance procedure.

### **Section 2. – Layoff**

The Company will determine the time of layoffs and the number of Employees to be laid off and in what job classifications layoffs will occur.

If a layoff should occur, the Union shall be notified at least two (2) weeks in advance. Such layoffs shall be made by bargaining unit seniority within the job classification affected. Should bargaining unit seniority within a job classification be equal, then site seniority shall be the determining factor as to who shall be laid off first. Should bargaining unit seniority and site seniority of the affected Employees be equal, then the determining criteria for breaking the tie shall be a flip of the coin with the Employee losing the coin flip being scheduled to be laid off.

- 2) An Employee scheduled to be laid off within any classification may use his/her bargaining unit seniority to bump a less-senior bargaining unit Employee who holds a classification for which he/she is qualified. If bargaining unit seniority is equal, then site seniority shall be used as the tiebreaker. Recall to employment from layoff shall be in reverse order of the layoff.
- 3) In the case of a layoff, probationary Employees shall be laid off first.
- 4) If at the time of layoff, any eligible Employee refuses to exercise their seniority right to bump less senior Employees within the active workforce, such Employee shall continue to retain seniority rights to be recalled. Any Employee scheduled to be laid off must notify the Company of an intention to exercise his/her seniority bumping rights within two (2) working days of the layoff notice. An Employee displaced in the bumping process may similarly exercise his/her seniority rights to displace another Employee in accordance with the same criteria.

### Section 3 - Termination of Seniority

An Employee's seniority shall be terminated and his/her rights under this Agreement forfeited for the following reasons:

- (1) Discharge for just cause, quit, retirement, or resignation;
- (2) Failure to give notice of intent to return to work after recall within five (5) working days, or failure to return to work on the date specified for recall. An excuse from a medical doctor, leave secured by statute or a covered contractual situation, shall exempt an Employee from this return to work requirement. However, such circumstances must be communicated to the Employer within the five (5) day period outlined above.
- (3) Time lapse of eighteen (18) months, or for a period equal to the Employee's seniority (whichever is less) since the last day of actual work for the Company.
- (4) Failure to return to work upon expiration of a leave of absence;
- (5) Absence in excess of one (1) year due to physical disability; except where such absence is due to compensable disability incurred during the course of such employment, such absence shall not break continuous service, provided that such individual has returned to work within a seven (7) calendar day period after final payment of statutory compensation for such disability or after the end of the period used in calculating a lump sum payment. Upon return to work from a period of Disability, the Employee must present appropriate documentation verifying their availability date and medical release.

#### **Section 4 – Recall**

##### **a) Order of Recall**

If the Company determines to fill job vacancies, such vacancies shall be filled through the job posting and selection process from the active workforce first. All excess vacancies, not filled through this bidding procedure, or left vacant as a result of the bidding process shall be filled from the laid off panel of Employees awaiting recall who have the seniority and the qualifications to return to work and assume the job vacancy that is open. Such Employees, eligible for recall, shall be recalled in reverse order of layoff using seniority and qualifications to perform the duties of the job vacancy as the criteria for recall.

##### **b) Notice to Recall**

The Company will forward a notice of recall by certified mail to the last known address of the Employee reflected on records. The Employee must, within five (5) working days of delivery or attempted delivery of the notice of recall, notify the Company of his/her intent to return to work on the date specified for recall and thereafter, return to work on such date.

#### **Section 5 - Job Posting**

When the Company determines to fill a job within the Bargaining Unit, the Company will put a notice of the vacancy or job opening on the Employee bulletin boards for five (5) workdays. Subject to the provisions elsewhere in this Agreement any Employee may submit a bid for the job to the Human Resources Office in writing, during the posting period. The Company shall not be required to post a notice of vacancy or job opening for a particular job more than once every sixty (60) days. Any bid submitted within a posting period shall remain valid for sixty (60) days. If the Employer does not fill the job that is bid within 60 days, regardless of the reason, and later decides to fill that vacancy, the bid must be reposted before the job can be awarded.

#### **Section 6 - Selection**

From among Employees qualified for a posted job, who submit bids for the job, the Company will award the job to the most senior/qualified Employee. Provided that if two or more bidders have the same bargaining unit seniority, the Company will award the job to the Employee with the greater site seniority. If no Employees qualified for the posted job submit bids for the job, or no one from the recall panel is eligible to fill the vacancy, the Company may fill the job from any source.

#### **Section 7 - Restriction on Bidding**

An Employee who is awarded a job for which he/she bid, must accept it. If, immediately prior to being awarded a posted job, the Employee's designated job

classification was the same as or higher than the posted job, the Employee may not bid for another job for a period of twelve (12) months after being awarded the job.

#### **Section 8 - Disqualification of a Bidder**

An Employee who is unable to perform the job to which he/she bid to the satisfaction of the Company within thirty (30) workdays after being awarded the job shall be returned to the job classification he/she held at the time of submitting the bid.

#### **Section 9 - Qualifications**

It is agreed that the Company is the sole and exclusive agent to determine the qualifications, skills and abilities of all Employees.

### **ARTICLE X - HOLIDAYS**

#### **Section 1 - Holidays Celebrated**

The following days shall be paid holidays for the purpose of this Agreement:

1. New Year's Day
2. President's Day
3. Martin Luther King Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veteran's Day
9. Thanksgiving Day
10. Christmas Day

Holidays that fall on Sunday will be observed on the following Monday and  
Holidays that fall on Saturday will be observed on the preceding Friday.

#### **Section 2 - Eligible Employees**

To be eligible for Holiday pay, an Employee must be on the active payroll of the Company, and be in a compensable state on the day before and the day after the Holiday.

#### **Section 3 - No Work on the Holidays**

An Employee who is not required to work on the day observed as a Holiday shall receive eight (8) hours pay at his/her straight-time rate of pay, plus shift differential if applicable.

#### **Section 4 - Work on the Holiday**

An Employee who is required to work on the day observed as a Holiday shall receive time and one-half (1 1/2) times his/her straight time hourly rate for all hours actually worked on that day, in addition to eight (8) hours pay at his/her straight time rate of pay plus shift differential if applicable.

#### **Section 5 - Holiday During a Personal Leave Period**

If a Holiday occurs during the scheduled vacation of an eligible Employee, the Employee will not be charged a personal leave day for the Holiday and the observed Holiday shall be paid as Holiday pay.

### **ARTICLE XI – PERSONAL LEAVE**

#### **Section 1. Personal Leave**

<u>Years of Full Time Service</u>	<u>Accrual Rate</u>
Less than two years	12 days
Two to five years	15 days
Five to ten years	18 days
Ten to fifteen years	21 days
Fifteen to twenty years	24 days
Over twenty years	27 days

- a) All full-time regular Employees in active payroll status (i.e., not on WC, A&S, or LWOP) for a minimum of fifteen days during the month shall accrue a prorated amount of personal leave based on the schedules above. Employees will accrue personal leave based on years of full-time service. Personal leave may be taken in thirty (30) minute increments.
- b) Employees may carry over a maximum of 288 hours of personal leave from one calendar year to the next. All personal leave above the maximum carry over will be paid to the Employee in the second payroll of January in the following year. All unused personal leave at the time of termination will be paid to the Employee in the final paycheck following termination.
- c) Employees will begin to accrue leave at the higher rate beginning with the first pay period of the month after the Employee completes the number of years of service required for the higher rate.
- d) Employees desiring to take personal leave must submit the request to his/her manager by 9:00 a.m. the day before leave is desired. Leave will be granted on a first come first serve basis. In some cases where submittals are made at the same time and only one Employee is allowed off due to the need to meet customer requirements, the situation will be determined by seniority. In cases of emergency or illness, same day requests for personal leave must be made to the

Employee's manager for approval at least thirty (30) minutes prior to the Employee's scheduled start time.

## **Section 2 –Catastrophic Leave**

Employees will continue to accrue 2 hours of catastrophic leave per month into their leave account. Current catastrophic leave accumulation will be carried forth into this Agreement. Leave balances will be carried over from one year to the next. Leave usage will be in accordance with Company policy which shall be revised in consultation with the Union.

## **ARTICLE XII - LEAVES OF ABSENCE**

### **Section 1 - Bereavement Pay**

When death occurs in an Employee's immediate family (spouse, mother, father, mother-in-law, father-in-law, son, daughter, brother or sister, step-father, step-mother, step-children, step-brother or step-sister, grandfather, grandmother and grandchildren), an Employee upon request will be excused for up to three (3) consecutive days to include the day of the funeral. Upon the approval of Human Resources, an Employee may reserve one of the days for estate affairs at a later date. The Employee shall receive pay at his/her regular rate, provided it is established that he/she attended the funeral.

### **Section 2 - Severance Pay**

An Employee who is terminated shall be paid one week's pay per year of Service up to a maximum of eighteen (18) weeks (minimum of 1 week will be paid).

### **Section 3 – Jury Duty**

An Employee who is called for and who performs jury duty or who is subpoenaed to appear in court as a witness will be compensated by the Company for the difference between payment received for such compulsory jury duty or compulsory court appearance and the payment the Employee would have received for straight time hours they thereby lose from a normal work schedule computed at the Employee's established hourly base rate as long as the Employee is not party in the legal action.

In order to be paid by the Company for such leave, the Employee must submit to the Human Resources written proof of having served, and the duration of such service.

### **Section 4 - Military Service**

Regular full-time Employees who are members of a military reserve organization and are ordered to temporary training duty are paid the difference for which their straight time pay exceeds their military pay, excluding travel allowances. Payment

is made for up to ten days of training in any calendar year. In support of this payment, Employees must furnish Human Resources a copy of their orders along with a voucher from their paymaster as soon as practical following their training

### **Section 5 - Union Business**

Employees who have an official request for a leave of absence shall be granted leave to participate in Union activities. Unless otherwise allowed by the Employer, no more than two leave requests will be granted for Union activities on any given day.

## **ARTICLE XIII - MANAGEMENT RIGHTS**

The Union recognizes that the Company retains the sole right to manage its business, as such right existed prior to the execution of this Agreement except only as expressly abridged by a specific provision of this Agreement. The Company reserves and retains, solely and exclusively, all of its inherent rights to manage the business including but not limited to:

1. The direction of the working force including the right to hire and decide the number of Employees required and to make rules governing the conduct of the working force which will be applied in a reasonable fashion.
2. Determine work methods and procedures, and to issue, amend and revise policies, rules, regulations, and practices.
3. Require all Employees to observe all safety regulations prescribed by the Company and/or the Government and to work safely.
4. Discharge, suspend, or discipline Employees for just cause.
5. The Company may, if it desires, maintain a variety of skills within its group of Employees to be prepared to have skills and/or supervision for any type of work that may arise.
6. The Union understands the extreme importance of keeping operating equipment, units, and facilities running at all times. The Union also understands that the loss of production and the cost of repairs together create a great loss to Government. Therefore, the Union will encourage and advise the Employees to exhaust every effort, ways and means to perform work of good quality and quantity. The Company and the Union recognize the necessity for eliminating restrictions and promoting efficiency and agree that no rules, customs or practices shall be permitted that limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an Employee shall perform, nor shall there be any restrictions against the use of any kinds of machinery tools or labor-saving devices.



7. It is understood by the Company and agreed to by the Union, that the Employees of the Company will perform the work requested by the Company without having any concern or interference with any other work performed by any Employees who are not covered by this Agreement doing non-bargaining unit work.
8. The Company's failure to exercise any right, prerogative, or function in a particular way, shall not be considered a waiver of the Company's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the employees provision of this Agreement. In exercising its rights under this Article, the Company shall not violate the provision of this Agreement.

#### **ARTICLE XIV - PERIODIC CONFERENCES**

The parties recognize for their joint benefit, the prosperity and efficiency of the Company are dependent upon their ability to work cooperatively. In order to achieve this, the parties agree to meet periodically, but not less than three times per year, to discuss items of mutual interest. The Company shall designate three (3) representatives and the Union shall designate three (3) representatives to participate in the conference. Union representatives that are the Employees of the Company shall be compensated at their applicable straight time rate for their time spent in conference.

#### **ARTICLE XV - BULLETIN BOARDS**

The Employer will provide a bulletin board or bulletin boards for the use of the Local Union on the property that are in conformity with government regulations and which provide reasonable access by the Union membership to information that the Union wishes to communicate.

#### **ARTICLE XVI - SAFETY**

##### **Section 1**

The Company will comply with all applicable health and safety laws and regulations and the Company and all Employees agree to cooperate toward the objective of eliminating accidents and health hazards. The Company will continue to make reasonable provisions for the safety and health of its Employees during the hours of their employment. The Union agrees that the Company may terminate any Employee covered by this Agreement who intentionally exposes him/herself or any individual to unsafe acts, which could result in serious bodily harm. All Employees must immediately report any work-related injury, as per site policy. An Employee may not be discriminated against for following this procedure.

##### **Section 2.**

The Company and the Union agree to establish a quarterly meeting to cooperate in the elimination of unsafe and hazardous conditions and the improvement of the safety record. The committee will consist of three (3) representatives from management and three (3) representatives from the Union.

### **Section 3.**

All Employees will follow the Company's Safety Operating Policies and Procedures as well as NETL's Environmental Safety and Health Program. Copies of these policies and programs will be available to all Employees on the Local Area Network (LAN) and in the Company's office of Environmental Safety and Health (EH&S). Any new Safety policies and/or procedures established by the Company shall be posted on the bulletin boards.

### **Section 4.**

District and/or International Representatives requesting access to the site to discuss safety matters/incidents with management personnel shall be granted access subject to the routine check in/out procedures.

### **Section 5.**

In cases involving major accidents or fatalities of bargaining unit Employees, the Union steward will be allowed to participate in the Company's investigation of the incident.

## **ARTICLE XVII - NEW EQUIPMENT**

In the event that new equipment or devices are introduced and are to be operated or maintained by bargaining unit personnel, the Company agrees to provide training on such equipment on an as needed basis. The Employees and the manner in which they are trained, will be determined by the Company.

## **ARTICLE XVIII - SUCCESSORSHIP**

The provisions of this Agreement shall be binding upon and to the mutual benefit of the Parties thereto, and to their successors and assigns, except as may otherwise be provided by applicable law or federal regulations.

## **ARTICLE XIX - NO STRIKE - NO LOCKOUT**

1. The Company agrees there will be no lockout of the Union or of Employees represented by the Union during the term of this Agreement.
2. The Union, collectively, and the Employees covered by this Agreement, agree they will not call, engage in or sanction any strike during the term of this Agreement.

## **ARTICLE XX - TEMPORARY/PART TIME EMPLOYEES**

No one may be retained in a temporary or part time capacity while any full-time Employee is on layoff. Temporary/part time Employees may never exceed fifteen percent (15%) of the full time classified workforce even when there is no reduction in

force/layoff. Temporary Employees with an anticipated employment of less than six (6) months will receive \$1.65 per hour in lieu of benefits. Part-time Employees will receive \$1.65 per hour in lieu of benefits. Temporary Employees shall not be employed for more than six (6) consecutive months.

## **ARTICLE XXI - CONTINUANCE OF EMPLOYER PROVIDED APPAREL AND TOOLS**

The Employer agrees to continue the practice of providing Employees with certain wearing apparel, tools and safety devices including, but not limited to, steel toed boots and shoes, uniforms, safety glasses, gloves, and other items previously provided to the Employee for his or her use in carrying out their duties. In the event that the government, for whatever reason, decides to discontinue certain programs that provide any of these items the Union will immediately negotiate with the Employer with respect to the impact that such changes have had on it's membership.

## **ARTICLE XXII - HEALTH BENEFITS**

### **Section 1 - Health Care**

Plan general outline attached - Plan carrier is at the discretion of the Employer, but changes in the level of benefits are subject to collective bargaining.

#### **a) First Full Year of the Agreement- January 2004 to December 2004**

Health care rates shall be set at:

Morgantown:
\$141.12 per month for full family coverage
\$100.15 per month for two party coverage
\$45.52 per month for single coverage

#### **(b) Second and Third Full Year of the Agreement - January 2004 to December 2005**

In the event that health care costs increase from one (1%) to four percent (4%) of the currently quoted premiums, (\$940.79 for Full Family Coverage, \$667.66 for 2-Party Coverage, \$303.48 for Single Coverage) the employer will cover the entirety of the cost increases.

In the event that health care costs increase one (1%) to four percent (4%) over the initial four percent increase outlined previously, the Employee will pay up to a maximum of four (4%) toward the cost share in their health care premium per month. The maximum shall be four percent (4%). The employer must show proof to the International Union and the UMWA District of cost escalation's above the initial four percent (4%) levels prior to raising co-pay premiums on the represented Employees no later than 30 days prior to the beginning of plan year starting dates in the second and third full year of this Agreement in order for these increases to be applied to the following year premiums. Failure to do

so will result in the next benefit year having the same premiums as the previous year.

Should the cost of health care increase over eight percent (8%) to the employer, the employer will have the option to notify the Union with respect to reopening the contract to bargain over the impact of such health care cost escalation's. Such re-opener request must be made by the employer no later than 30 days after January of the year 2004 or January of the year 2005. Once the re-opener windows pass the employer must wait until the next window opportunity to tender a request to the Union to reopen the Agreement over the health care issue. In the event that the employer chooses to reopen and does so in a timely fashion, the Union is free to address any and all contract provisions, including offering new areas for bargaining in order to bargain increased benefits for its membership in order to mitigate the impact of any increases that the employer may propose in the area of health care coverage amounts.

### **Section 2 – Waiver of Health Care Benefits**

Employees may opt to waive health insurance coverage and receive a waiver paid on a bi-weekly basis. Employees must furnish proof of other health coverage to qualify for the waiver. Employees may receive the following:

Individual - \$650.00 per year

Family - \$650.00 per year

### **Article XXIII - DENTAL PLAN**

The Dental Plan currently in effect will continue with a rate of \$15.00. Such rate shall continue for the life of this Agreement.

### **ARTICLE XXIV - SCHEDULE OF OTHER BENEFITS**

#### **Section 1 - Life Insurance and AD&D**

The Company will provide Life insurance as currently stated in the PFSI policy, equal to two (2) times the Employee's annual salary rounded up to the next thousand dollars. The Company will also provide AD&D as currently stated in the PFSI policy, equal to two (2) times the Employee's annual salary rounded up to the next thousand dollars. The rates for dismemberment/loss of sight etc. will also follow the current PFSI policy.

#### **Section 2 - Long Term Disability**

Employees may participate in the Company's Long Term Disability (LTD) Insurance Program as described in the PFSI LTD policy.

#### **Section 3 - Retirement/401K Savings Plan**

The Employer agrees to establish for each represented Employee an individual 401K Savings and Investment Plan. The Plan shall be established and handled by a reputable investment company and administered by them under arrangements with the Employer pursuant to the following:

1. The 401K Savings and Investment Plan will be funded on behalf of each Employee covered under the terms of this Agreement with respect to one or both of the following avenues;
  - (a) Employer contributions only up to a certain yearly maximum.
  - (b) Combination of Employer contribution up to a certain yearly maximum and Employer contribution for each Employee dollar set aside into the 401K savings and Investment Plan.
2. The Employer will be responsible for putting into an Employee's account the amount of fifty cents (\$.50) for each hour worked in a given year up to a maximum of one thousand dollars (\$1000) per contract year. This contribution by the Employer shall be made without respect to any contributions made by the Employee.
3. In addition to the contributions made by the Employer under (2) above, an Employee may elect to set aside a portion of his/her pay each pay period to also be placed into their 401K Savings and Investment Plan.
  - (a) Should the Employee choose to apply a portion of his/her pay as outlined in (3) above, the Employer, in addition to the contributions outlined in (2) above will also contribute fifty-five cents (\$.55) for every dollar set aside by the Employee up to six (6) percent of his/her salary.
4. The Employer agrees that it will bear the costs associated with the fees charged by the financial advisors who are handling the 401K Savings and Investment Plan for the Employer pursuant to this Agreement.
5. The 401K Savings and Investment Plan shall offer a diverse selection of investment vehicles in which an Employee may choose to invest his/her monies.
6. A year within the Plan outlined herein will run from anniversary date to anniversary date of the effective date of this collective bargaining Agreement.

#### **Section 4 - Dependent Life Insurance Plan/Supplemental Life Insurance Plan**

Employees may participate in the Dependent/Supplemental Life Insurance Program as described in the PFSI policy.

#### **Section 5 - Accident & Sickness/Short Term Disability**

The Company will provide A&S insurance as stated in the current PFSI policy, equal to two-thirds (2/3rds) of the Employee's weekly base rate up to a maximum of eight hundred (\$800) dollars per week.

#### **Section 6 - Awards Fees Distribution**

Bargaining unit members shall participate in twenty-five (25%) percent of the Awards Fees Distribution program.

**ARTICLE XXV - TERM OF AGREEMENT**

This Agreement shall take effect January 1, 2003, and shall remain in effect through December 31, 2005 and shall continue in effect from year to year thereafter, unless changed or terminated. Either party desiring to change or terminate this Agreement must notify the other in writing at least sixty (60) days prior to January 1, 2006.

IN WITNESS WHEREOF, each of the parties signatory hereto has caused this Agreement to be signed this 1<sup>st</sup> Day of JAN., 2003.

Michael Eddy  
or the Union

DP Reel  
For the Employer

Date 1/1/03

Date 1/1/03

**APPENDIX A**

**Wages**

- On January 1, 2003, all Employees covered by this contract shall receive a seventy-five cent (\$0.75) increase in their wages.
2. On January 1, 2003, the Employer shall remit to each Employee covered by this contract a check in the amount of three hundred dollars (\$300.00) less applicable withholdings representing a Fringe Benefit Payment.
- On January 1, 2004, all Employees covered by this contract shall receive a seventy-five cent (\$0.75) increase in their wages.
4. On January 1, 2005, all Employees covered by this contract shall receive a seventy-five cent (\$0.75) increase in their wages.

<u>Classification</u>	<u>1/01/03</u>	<u>1/01/04</u>	<u>1/01/05</u>
Tech I	\$13.33	\$14.08	\$14.83
Tech II	\$17.20	\$17.95	\$18.70
Tech III	\$19.10	\$19.85	\$20.60
Tech IV	\$21.55	\$22.30	\$23.05
Tech V	\$25.38	\$26.13	\$26.88

**APPENDIX B**

**MEMORANDUM OF UNDERSTANDING BETWEEN PFSI AND UMWA  
LOCAL 1717**

PFSI will post the appropriate jobs to reach the agreed upon staffing levels.

1. The attached job descriptions will replace the existing job descriptions in the collective bargaining agreement.
2. We will dismiss all current grievances without prejudice or precedent.
3. Engineering Technician I (ET-1) and (ET-2) will follow the agreed upon timeline to ET-3.

**ET-1 to ET-2**

Advancement to ET-2 will be based on one calendar year of satisfactory job performance. Unsatisfactory performance must be documented and may delay advancement. Job performance will be evaluated quarterly and the individual will be counseled.

**ET-2 to ET-3**

Advancement to an ET-3 will occur after the individual has five years of satisfactory site experience. Previous experience/education can be substituted for up to one year of site experience. Unsatisfactory job performance must be documented and may delay advancement. Job performance will be evaluated and the individual will be counseled.

Any delay in advancement under this item #3 may be challenged pursuant to Article 5, Grievance Procedure of the Collective Bargaining Agreement.

4. Additional ET-4 and ET-5 positions will be available if the need exists, as determined by management, or with regard to ET-5's, if five or more technicians are hired. No ET-6 classification work is being, or has been, performed by bargaining unit members.
5. Any level technician can work independently on tasks within his job description with periodic instruction and/or guidance from higher level technicians or supervisors. No technician on any level requires constant supervision.
6. ET-2 and above can train, instruct and provide guidance to other technicians equal to/or lower than his level.



7. ET-3 can assist in design work, and design work can be performed by ET-4 and above (see job descriptions). Field fitting and dimensional changes do not constitute design.
8. A group of two or more technicians at any level can work together as a team on tasks that they are competent to perform. The higher-level technicians can/should provide guidance to the team. A lower level technician can work as a helper with a higher level technician on tasks in the higher level. ET-1 and ET-2 may be assigned higher level work for the purpose of training and qualification for advancement. This does not constitute out of classification work. However, once an employee reaches ET-3 he will be paid the applicable rate for the work performed.
9. UMWA will agree to the current Award Fee sharing plan.
10. PFSI will recognize government site seniority.

This MOU will be effective October 6, 2000.

## Morgantown Position Descriptions

**Title:** Engineering Technician 1

9/26/00

### **Minimum Position Knowledge, Skills, and Abilities Required:**

High School diploma/GED or equivalent, and no job-related experience. Good communication and analytical skills.

### **Purpose and Scope:**

Under guidance/training from a higher level technician or supervisor or using detailed procedures/work instructions, performs simple and routine tasks or tests within, but not necessarily limited to a prescribed area of expertise. Work is checked in progress or on completion. Periodically, technician is assigned work above classification for the purpose of using experience gained for future assignments and advancement opportunities. Duties will be varied.

### **Essential Responsibilities/Requirements:**

1. Assemble or install equipment or parts requiring simple wiring, soldering, or connections, such as:
  - Install conduit, pull wire and terminate wire
  - Replace fuses, CB, overloads, electrical devices
  - Mount transmitters, thermocouples and gauges
  - Fabricate panels and assemble control bays
2. Perform simple or routine tasks or tests, such as tensile or hardness test, sample grinding, or sieve analysis, such as:
  - Transferring coal/or other bulk solids
  - Perform bulk density, crush strength and attrition testing
  - Prepare feedstocks (mix, blend)
  - Fill and weigh drums
  - Painting, labeling
3. Operate and adjust simple test equipment, and record data, such as:
  - Calibrate instruments such as gauges, balances and sensors
  - Operate Digital Voltage Meter
  - Use calipers and torque wrenches
4. Gather and maintain specified records of engineering data, such as:
  - Test data sheets, drawings, MSDS, P&ID's
  - Data log books
  - Perform Inventories
5. Perform computations by substituting numbers in specific formulas, such as:
  - Iso kinetic sampling and calculations
  - Release analysis, moisture analysis, water quality analysis
  - Engineering units conversion
  - Simple electrical calculations
6. Assist with the installation, fabrication, modification, and operation of test equipment used on special projects, such as:

Operate portable power tools (drills, saws, grinders, etc.)

Operate pipe threader, drill press, band saws, lathe, jig saw and other stationary equipment

- Install tubing, piping, gauges, valves and fittings
- Operate oxy-acetylene torch

Perform routine facilities maintenance and repair and support higher level technicians in performing non-routine facilities maintenance and repair.

8. Perform other position related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.

Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.

3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

Title: Engineering Technician 2

9/26/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent and at least three years of job-related experience, or one year satisfactory performance at an Engineering Technician 1 level. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Under guidance from a higher level technician or supervisor, performs generally standardized tasks or tests involving a sequence of related operations, within, but not necessarily limited to a prescribed area of expertise. Follows standard work methods on recurring assignments, but receives explicit instructions on unfamiliar assignments. Technical adequacy of routine work is reviewed on completion; non-routine work may also be reviewed in progress. Will perform the essential responsibilities of lower level technicians and will instruct/train other technicians. Periodically, technician is assigned work above classification for the purpose of using experience gained for future assignments and advancement opportunities. Duties will be varied.

**Essential Responsibilities:**

1. Assemble or construct simple or standard equipment or parts, such as:
  - Assemble flow loop components for completion.
  - Construct project I/O hardware panels.
  - Fabricate sheet metal enclosures.
  - Install and fabricate tubing and piping runs per the P&IDs.
2. Service or repair simple instruments or equipment, such as:
  - Repair or replacement of pumps and motors used on research projects
  - Repair or replacement of thermocouples, gauges, switching devices, and valves.
  - Troubleshoot and repair or replacement of electrical devices and I/O hardware
3. Conduct a variety of tests using established methods, such as:
  - Perform leak and hydro testing procedures
  - Perform load testing on electrical circuits and panels
  - Perform water analyses for conductivity and hardness
4. Prepare test specimens, adjust and operates equipment, and records test data, such as:
  - Perform sizing analysis and generate size fractions for testing
  - Calibrate and adjust test instruments such as gauges, balances, sensors and pumps
  - Record data from project operations systems (APACS, GENESIS, PARAGON, etc.)
5. Extract engineering data from various prescribed but non-standardized sources, such as:
  - Retrieve data from project operations software
  - Retrieve and use data from P&IDs, Instrument Indexes, logic drawings
  - Retrieve data from material test data sheets and instrument certification sheets
  - Record data from preventive maintenance performed on equipment
6. Present the data in prescribed form, such as:

- Organize data in tabular form
- Graph test data
- Perform sampling calculations

Perform a wide variety of duties in the installation, modification, and operation of test equipment used on special projects, such as:

- Machine or fabricate replacement parts for research projects
  - Perform basic welding on non-critical applications
  - Install electrical and instrument equipment to research projects.
  - Fabricate sheet metal cabinets, wire trays, and hoods
  - Install spool pieces, blanks, and piping components
  - Install/modify tubing, piping, gauges and fittings
  - Provide operations support to research projects, including data recording and sampling
- 8 Perform basic preventive maintenance (i.e. visual inspections, lubrication, filter changing, cleaning, etc.).
  9. Perform other position related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
- 15 May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure

- to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
  4. Use of emergency showers and eyewash stations may be required

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

Title: Engineering Technician 3

9/26/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent and at least five years of job-related experience, or four years satisfactory performance at an Engineering Technician 2 level. Specific training, and licensing and advanced knowledge in the particular area of specialization, plus a broad knowledge of other disciplines. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Performs routine and non-routine tasks or tests of some complexity and variety, within, but not necessarily limited to a prescribed area of expertise. Receives initial instructions, equipment requirements, and advice from supervisor or higher level technician as needed. Performs recurring work independently, and the technical adequacy or conformity of routine work is reviewed on completion. Non-routine work may be reviewed in progress. Will perform the essential responsibilities of lower level technicians and will instruct/train other technicians. Periodically, technician is assigned work above classification for the purpose of using experience gained for future assignments and advancement opportunities. Duties will be varied.

**Essential Responsibilities/Requirements:**

1. Construct components, sub-units, or simple models or adapt standard equipment. May trouble shoot and correct malfunctions, such as:
  - Fabrication and welding of air, nitrogen, and fuel distribution systems
  - Fabrication of burner nozzles and transition picccs
  - Installation of Tail gas sampling systems
  - Installation of motor and gear reduction units, performing shaft alignment to unit
  - Investigate system sources for proper pressures
  - Investigate non-operating motors and pumps and make operational
2. Follows specific layout and scientific diagrams to construct and package simple devices and sub-units of equipment, such as:
  - Fabrication and installation of vessels
  - Fabrication and installation of instrument racks
  - Fabrication and installation of process piping
  - Installation of electrical conduit and switch gear
  - Fabrication and installation of process control panel and components
3. Select or adapt standard procedures or equipment, using fully applicable precedents.
4. Select, setup, and operate standard test equipment and records test data, such as:
  - Perform pre-operation safety checks to units, correct deficiencies and document
  - Perform operation and documentation on testing unit
  - Operate sampling equipment for monitoring gas streams



5. Extract and compile a variety of engineering data from lab/test rig notes, manuals, etc.
6. Process data and identify errors or inconsistencies
7. Select methods of data presentation
8. Assists in design modification by compiling data related to design, specifications, and materials, which are pertinent to specific items of equipment or component parts.

Develop information concerning previous operational failures and modifications

10. Setup, operate, and maintain service support equipment and record data in logs

Perform major planned preventive or major overhaul maintenance using diagnostic equipment and equipment materials.

12. Perform other position related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

Title: Engineering Technician 4

9/26/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent, and at least seven years of job-related experience. Specific training, and licensing and advanced knowledge in the particular area of specialization, plus a broad knowledge of other disciplines. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Performs routine and non-routine tasks or tests of substantial complexity and variety where operational precedents may sometimes not exist. Performs recurring and non-routine work independently, and the technical adequacy or conformity of non-routine work is reviewed on completion. Such assignments are typically part of broader assignments, and they may need to be screened to eliminate and resolve unusual design problems. Will be tasked to plan and estimate requirements for such assignments. Will perform the essential responsibilities of lower level technicians and will instruct/train other technicians. Periodically, technician is assigned work above classification for the purpose of using experience gained for future assignments and advancement opportunities. Duties will be varied.

**Essential Responsibilities/Requirements:**

1. May be assigned to independently lead and coordinate the activities on a task or shift, which may include;
  - Recognize and correct unsafe practice and conduct
  - Notify management of any abnormal physical or mental conditions (state) of employe on assigned shift
  - Ensure compliance and correct discrepancies with area safety conditions, and notify management if discrepancies can not be resolved
  - Ensure that policies and procedures are being followed
2. Develop or review designs by extracting and analyzing a variety of engineering data
3. Perform a wide variety of duties of complex nature in the installation, modification, and operation of electronic equipment.
4. Perform market surveys for equipment as per the engineering requirements, and provide information to higher level technician, engineer, or management.
5. Perform other position related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders

3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.
5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

**Title:** Engineering Technician 5

9/26/00

**Minimum Position Knowledge, Skills, and Abilities Required:**

High school diploma/GED and vocational/technical training beyond high school or equivalent, and at least nine years of job-related experience. Specific training, and licensing and advanced knowledge in the particular area of specialization, plus a broad knowledge of other disciplines. Good communication and analytical skills and a working knowledge of computer systems and software application programs.

**Purpose and Scope:**

Performs non-routine and complex assignments involving responsibility for planning and conducting a complete project of relatively limited scope or a portion of a larger and more diverse project. Conducting these assignments will involve estimating and scheduling resources and adapting plans, techniques, designs, or layouts. Will be necessary to contact personnel in related activities to resolve design and layout problems and to coordinate the work. Will perform the essential responsibilities of lower level technicians and will train/instruct lower level technicians. Duties will be varied.

**Essential Responsibilities/Requirements:**

1. Investigate accidents with Safety Officer, completes and forwards accident/incident reports to management.
2. Provide weekly safety contacts to assigned personnel.
3. Participate in the interviewing of candidates, and completes interview appraisal forms.
4. Provide non-subjective input to management in the performance evaluations of engineering technicians assigned.
5. Provide non-subjective input to management for personnel bidding on job postings.
6. Ensure work order estimates and closeouts have been completed by the assigned lower level technicians and forwarded to management.
7. Works with management in coordinating weekly planning and work schedules.
8. Perform other position-related duties as assigned or requested.

**Physical and Mental Demands:**

1. Be able to read, write, and perform simple mathematical calculations.
2. Use step and sectional ladders
3. Use various types of respirators, to include self contained breathing units.
4. Personal protective equipment such as safety glasses, safety toe shoes, hard hats, lab coats, hearing protection, face shields, and gloves may be required. Requirements will vary depending on the area and type of work performed.

5. Overhead or lift-bucket work maybe required. Safety harnesses will be worn.
6. Work in a confined area may be required.
7. Operation of motor vehicles including forklifts may be required.
8. Vision requirements include the ability to focus and depth perception
9. The ability to respond to visual and audio alarms is required.
10. Able to routinely lift and move twenty-five pounds, occasionally lift or move forty pounds, and transfer manually fifty pound containers
11. Hand eye coordination is required.
12. Operate cranes and hoists
13. Will be trained in basic first aid and rescue
14. While performing his job, the employee is regularly required to stand, walk, extend hands and arms, and to talk and hear. The employee is frequently required to use their hands to handle or feel objects, tools, and controls. The employee is frequently required to climb, balance, stoop, kneel, crouch, or crawl.
15. May include shift work.
16. May be asked to participate in Emergency Response Operations on a voluntary basis, refusal is without prejudice. All volunteers will receive appropriate training.

**Work Environment:**

1. Frequently works in hot and cold environments, near operating machinery, heated and pressurized systems
2. Work may expose employee to fumes, airborne particles, coal dust, irritants, sensitizers, toxic or caustic chemicals and noise. Controls are used to bring exposure to within acceptable levels
3. Employee will be trained to use spill cleanup kits.
4. Use of emergency showers and eyewash stations may be required.

**Integrated Safety Management:**

1. Know and follow environment, safety, and health (ES&H) policies and procedures that apply to their job assignments.
2. Become knowledgeable of and maintain awareness of the ES&H hazards associated with their work. Perform work safely in accordance with hazard controls.
3. Report all unsafe operations, and, if necessary, exercise stop-work authority in cases of imminent danger.
4. Work only on those tasks in which they have the required competence, training, skills, and abilities so as to prevent injury to ones self, employees, the public, or the environment.
5. Maintain active involvement in the introduction, revision and/or promotion of ES&H/ISM program activities.

REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON, D.C. 20210

William W. Gross  
Director

Division of Wage  
Determinations

Wage Determination No.: 1999-0577

Revision No.: 3

Date of Last Revision: 05/01/2003

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This wage determination applies at the address(es) below:

Federal Energy Technology Center, Monongalia County, WV

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Employed on contracts for site and program support operations services.

Collective Bargaining Agreement between EG&G Services and The United Mine Workers of America effective January 1, 2003 through February 28, 2006.

Collective Bargaining Agreement between EG&G Technical Services and The United Mine Workers of America Clerical Unit effective February 1, 2001 through January 31, 2004.

In accordance with Sections 2(a) and 4(c) of the Service Contract Act, as amended, employees employed by the contractor(s) in performing services covered by the Collective Bargaining Agreement(s) are to be paid wage rates and fringe benefits set forth in the current collective bargaining agreement and modified extension agreement(s).

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#10#13

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**EG&G SERVICES**

**AND THE**

**UNITED MINE WORKERS OF AMERICA**

**January 1, 2003 THROUGH February 28, 2006**



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## **ARTICLE I – PURPOSE**

It is the intent and purpose of the Company and the Union to establish, through this Agreement, the wages, hours of work, and conditions of employment about which the Company and the Union bargained for the Employees of the Company in the unit defined herein; to provide a procedure for processing disputes between the Company and the Union as to the interpretation and application of the provisions of this Agreement; and generally to govern the relationship between the Company and the Union and its members.

The Union recognizes the necessity to achieve efficiency in production and acknowledges that it is the further purpose of this Agreement to prevent interruptions of work and interference with the efficient operation of the Company's business. It is the intent and purpose of the parties to promote harmony between the Company, its Employees, and the Union for the efficient and successful operation of the Company's contract with the government so that the Employees and the Company may mutually benefit.

Except as specified in this Agreement, the Union and the Employees it represents are not waiving rights which exist under the National Labor Relations Act (NLRA) to bargain over Employees' wages, hours and working conditions. Nor do the Union and the Employees it represents waive any right to challenge any governmental action that would dictate a change in a term and condition of employment provided for under this Agreement.

The Company and the Union mutually agree not to discriminate in any way against any Employee with respect to hiring, compensation and terms or conditions of employment because of applicable laws relating to the disabled and Vietnam-era Veterans. Neither the Company nor the Union shall discriminate against any Employee on the basis of race, creed, national origin, gender, age, and political activity or otherwise.

## **ARTICLE II - SCOPE AND COVERAGE**

The Company hereby recognizes the Union as the exclusive bargaining representative for the purpose of bargaining collectively as required by Section 8D of the NLRA with respect to wages, hours and other conditions of employment, for the Company's Employees regularly assigned to the following bargaining unit, all full-time and regular part-time Computer Technicians, Electrical Technicians, Environmental Safety and Health Technicians, Facilities Maintenance Technicians, Fleet Operators, HVACR Technicians, Stationary Engineering Technicians, Mobile Equipment Repair Technicians, and Storeroom Attendants employed by the Employer at its Morgantown Facility on the Site Operations and Program Support Services Contract or any successor contracts.

Managers and Supervisors shall not perform bargaining unit work except in cases of emergency or Employee training/instruction.

## **ARTICLE III - REPRESENTATION**

### **Section 1 - Representative**

The Representative of the Union shall have access to the shops and office of EG&G at the National Energy Technology Laboratory (NETL) for the purposes of adjusting disputes, investigating working conditions, and ascertaining that the Agreement is being adhered to, providing there is no interruption of the Company's business and providing further that (a) the Union Representative notifies the Human Resources Representative in advance of any visit and (b) prior to entering any facilities under the control of the Company, the visiting representative reports to the Human Resources Office or the Program Manager's Office in their absence.

### **Section 2 - Shop Stewards**

The Company recognizes the right of the Union to designate one (1) Steward and one (1) Alternate for site support. The authority of the Steward so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

- a. The investigation and presentation of grievances in accordance with the provisions of this collective bargaining Agreement.
- b. The transmission of such messages and information as shall originate with, and are authorized by the Union or its officers.

### **Section 3 - Scope of Stewards' Union Activities**

Stewards' Union activities on Company time shall fall within the scope of the following functions:

- a. To investigate a complaint or grievance and to present a complaint or grievance to an Employee's immediate manager in an attempt to settle the matter for the Employee or group of Employees who may be similarly affected.
- b. To meet by appointment with an appropriate manager or other designated representative of the Company, when necessary, to adjust grievances in accordance with the Grievance Procedure of this Agreement.
- c. The Steward shall be allowed to perform these duties during the Steward's working hours without loss of compensation. The performance of these duties shall be limited to a reasonable amount of time per shift.
- d. The duties specified above shall not relieve the Steward of his/her duties and obligations as an Employee of the Company, and he/she shall continue to be subject to all rules, regulations and procedures applicable to other Employees. The Steward shall notify his/her immediate manager before leaving the work area to conduct Union business.

#### Section 4 - Checkoff

The membership dues, including initiation fees, and assessments of the United Mine Workers of America and its various subdivisions, credit, voluntary COMPAC contributions and other voluntary deductions, the Union-sponsored group auto insurance, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Company covered by this contract and shall be remitted by the Company to the properly designated officers of the Union for distribution to its various branches. Such remittance shall be made within 30 days of the date such amount has been checked off. The Company shall also submit an itemized statement showing the name of each Employee, his/her Social Security number, hours worked, and the amount checked off for dues, initiation fees, and assessments. Such itemized statement shall be made within 60 days of the date the check-off has been made, and shall include a list of Employees from whom dues, initiation fees and assessments have not been collected.

In order that this section may become effective and operate within the limitations of the Labor-Management Relations Act of 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the respective Company, and the Company agrees to aid, assist and cooperate in obtaining written authorizations from each Employee so employed. Upon the presentation to the Company of such authorizations in such reasonable form as time and circumstances may allow, said Company shall make deductions so authorized and deliver the same to the designated District officer of the Union or to such authorized representative as may be designated by the Union.

#### Section 5 - Notification

The Union shall notify the Company of the amount of dues to be withheld by the Company, and shall advise the Company in writing at least two (2) months prior to any change in the amount to be withheld.

#### Section 6 - Membership

It is agreed that all Employees coming under the terms of this Agreement shall be required to make application to, and become members of, the Union within thirty (30) calendar days of their employment. In the event an Employee does not become a member of the Union within the time frame prescribed above, the Union will approach management and request that the Employee be terminated from any employment which is covered under this Agreement. The Union agrees to hold the Company harmless from any action that may come about as a result of the application of this section.

## **ARTICLE IV - GENERAL WAGE PROVISIONS**

### **Section 1 - Wage Rates**

The hourly rates for Employees covered by this Agreement shall be as set forth in Appendix A. Wages shall be paid biweekly.

### **Section 2 - Shift Differentials**

The Company shall pay a shift differential of 5% for the second shift and 7% for the third shift.

### **Section 3 - Out of Classification Work**

When a qualified Employee is specifically assigned to and works independently for a period of four (4) hours or more in a higher job classification, the Employee will receive the rate of the higher classification for the entire shift.

### **Section 4 - Temporary Assignments**

Every reasonable effort shall be made to keep an Employee at work on the job duties normally and customarily a part of his/her regular job.

### **Section 5 - Schedule Changes**

An Employee's schedule shall not be changed for the explicit purpose of avoiding overtime.

### **Section 6 - Tuition Refund**

Tuition refund will be provided in accordance with Company policy at the time of this Agreement.

### **Section 7 - Educational Assistance**

The Company agrees to provide reimbursement of lost wages and expenses for Employees attending and successfully completing courses offered by the Union and with prior approval by Company (e.g., safety programs, labor management cooperative programs, etc.).

## **ARTICLE V - GRIEVANCE PROCEDURE**

### **Section 1**

All grievances that may arise will be handled in the following manner.

Step 1: The Employee having a grievance will present the same verbally to his manager during the workday in which the act or condition originating the grievance occurs, if possible, but in any

event not later than five (5) working days from the day on which the grievant should reasonably have known of the event giving rise to the grievance. A steward shall be given the opportunity to be present if the employee so desires. The manager will render his decision within five (5) working days of his meeting with the grievant. Settlements or withdrawals at this step shall not constitute a precedent in the handling of other grievances. Any grievance not filed by the aggrieved party within five (5) working days of the time when the employee reasonably should have known it shall be denied as untimely and not processed further.

Step 2: Should the grievance not be satisfactorily settled by the discussion outlined in Step 1 above, the Union shall submit the grievance in writing on a Standard Grievance form to the Human Resources representative within five (5) working days thereafter. The written grievance presented must contain the basis of the employee's claim, articles violated and suggested remedy. Within seven (7) working days from the time the employee or steward submits the written grievance, the steward will meet with the HR Representative or his designated representative and they shall make every effort to settle the dispute. Should the grievance not be satisfactorily settled by the steward and the HR representative, the Union shall present the grievance to a UMWA District representative.

Step 3: Within seven (7) working days of the time the grievance is referred to them, the District Representative and the Program Manager or his designee shall meet to review the facts and pertinent contract provisions in an effort to reach agreement. The grievant and the steward shall have a right to be present.

Step 4: The Union may, not later than five (5) working days after receipt of the Company's decision in Step 3 submit the matter to arbitration by requesting that the Federal Mediation and Conciliation Service (FMCS) submit a list of five (5) names of arbitrators, from which the Company and the Union shall choose an impartial arbitrator to decide the matter. Following receipt of the list of names of arbitrators, the parties shall then alternately strike the names from the panel and the name remaining shall be the Arbitrator in the case. The determination of which party is to strike first shall be determined by a coin flip. Striking shall take place within seven (7) working days of receipt of the arbitrators list.

## Section 2

In arbitration proceedings, both parties shall share the expense of the impartial Arbitrator. The parties will be responsible for paying their own representatives and witnesses.

## Section 3

All arbitration hearings shall be held at a mutually agreed upon neutral location with the Company and the Union agreeing to equally share expenses incurred in the hearing room.

## Section 4

The findings of the arbitrator shall be final and binding on all parties.

Section 5

All time limits stated in this article shall be treated as jurisdictional in nature and the failure to follow any of the set time limits shall result in the grievance being void and waived and the matter shall end without resort to mediation/arbitration. A normal workday is defined as any day on which a bargaining unit Employee is at work Monday through Friday, except holidays.

Section 6

Except by mutual written Agreement to the contrary, only one grievance shall be taken to arbitration at any time before the same arbitrator.

Section 7

The impartial Arbitrator shall only have jurisdiction and authority to determine the meaning, application of, or compliance with provisions of this Agreement and shall not have jurisdiction or authority to add or detract from or alter in any way such provisions or any rules of discipline attached hereto.

Section 8

Time frames pursuant to discharge shall be commensurate with provisions of Article VII, Section 1, Discharge/Arbitration of this Labor Agreement. In these cases arbitrators shall be selected immediately by the parties pursuant to Article V, Section 1, Step 4, Grievance Procedure, as it pertains to the Arbitrator selection process, and the actual arbitration shall be held within seven (7) days from the time it is referred to arbitration at Step 4.

Section 9

Time limitations may be waived by mutual Agreement of both parties.

Section 10

The Company and the Union may refer grievances to non-binding mediation based on mutual consent.

**ARTICLE VI - DISCIPLINARY PROGRAM AND DISCHARGE**

Section 1 - Disciplinary Program

No one may be disciplined or discharged without just cause. Discipline will be applied without discrimination on account of race, color, religion, gender, age, or national origin, disability or veteran's status. The procedure will be carried out uniformly in accordance with the following steps:

**First Offense** - Verbal warning, with a record on file with Department Manager and Local Steward.

**Second Offense** - Written warning with a record on file with the Human Resources Office, and a copy given to the Local Union Steward.

**Third Offense** - Two working days off without pay, with a record on file with the Human Resources Office, and a copy given to the Local Union Steward.

**Fourth Offense** - Discharge.

In case of serious offenses, which affect customer relations (and thus jeopardize the jobs of fellow workers) or which could result in injury or death, to the Employee, fellow workers, or the public, the Company shall have the right to bypass any or all of the progressive discipline steps and may discipline or discharge the Employee immediately subject to the arbitration procedure. These offenses shall include, but shall not be limited to the following:

- a. Possession, use, sale or distribution of illegal substances and/or intoxicating beverages on the work site.
- b. Bringing firearms or other weapons on the job.
- c. Intentional theft of Government, Company or Employee property.
- d. Intentional destruction of Government, Company or Employee property.
- e. Intentional fraudulent activity.
- f. Intentional falsification of Government or Company documents.

Disciplinary actions will remain in an Employee's personnel file for a maximum period of one year unless otherwise designated by the Company.

## Section 2 - Attendance Control

Excessive use/abuse of absenteeism or tardiness increases costs, creates an undue hardship on fellow Employees and limits the Company's ability to effectively plan and accomplish customer goals. Any Employee requesting time off must have prior approval of his/her manager. An unexcused absence is an absence that does not have prior approval of management or an absence without sufficient and appropriate documentation upon return to work. Employees absent for three (3) consecutive working days without a valid excuse or proper authorization may be considered to have voluntarily quit. Otherwise, the policy toward absenteeism will be as follows:

- a. Unexcused absence or tardy / first occurrence / Verbal warning



- b. Unexcused absence or tardy / second occurrence / Written warning.
- c. Unexcused absence or tardy / third occurrence / 3 day suspension.
- d. Unexcused absence or tardy / fourth occurrence / Termination.

All disciplinary actions will remain in the Employee's personnel file for a period of one year.

## **ARTICLE VII - DISCHARGE/ARBITRATION**

### Section 1 - Discharge

In cases of discharge, the Company shall notify the Local Union President and/ or Union stewards of the discharge and the reason for such action in writing within two (2) working days. An Employee who claims he/she has been discharged without just cause must notify the Union within two (2) working days following the discharge. Notice that a discharge is being grieved must be made to the Company, in writing by the Union, within five (5) working days from the date of discharge. Discussions between the Company and the Union Representative concerning the discharge shall be considered Step 3. If not settled in Step 3 all discharges will be referred to immediate Arbitration.

## **ARTICLE VIII - HOURS AND OVERTIME**

### Section 1

When a shift is needed to respond to customer need, the Company will provide notice of a shift change to affected Employees no later than 2 p.m. Thursday in the week prior to the proposed shift change.

### Section 2

A negotiated overtime distribution policy and overtime tracking roster will be posted on the appropriate bulletin boards.

### Section 3

The work day shall begin at 12:01 a.m. and shall end at 12:00 midnight. The third shift which normally begins at 11:00 p.m. will be considered the first shift of the following day.

### Section 4

For payroll purposes the work week shall begin at 12:01 a.m. Saturday and shall end at 12:00 midnight the following Friday.

### Section 5 - Regular Work Week

The regular work week for Employees will consist of five (5) work days during the period Monday through Friday, with two (2) consecutive days off (Saturday & Sunday.)

In order to modify the NETL Site Heating schedule, the round-the-clock seven day schedule requires modification in order to implement the schedule. It is understood by both parties the need to start a different schedule for the NETL Site Heating season. The schedule will consist of seven (7) days on and two (2) days off, six (6) days on and two (2) days off, and seven (7) days on and four (4) days off. The rotation will begin with the first shift 6:30 a.m. to 2:30 p.m., then move to the second shift 2:30 p.m. to 10:30 p.m., and conclude with the third shift 10:30 p.m. to 6:30 a.m. The third shift, which normally begins at 10:30 p.m., will be considered the first shift of the following day. The operator completing their shift will stay 15 minutes beyond their shift for shift turnover to inform the on-coming operator on the operations status. This time will be recorded as overtime at one and one half times their rate. The shift operator will not leave the operation unattended until relief is obtained. After a complete rotation, the employee will return to the regular work week schedule under Article VIII, Section 5 – Regular Work Week until their next turn in the rotation or shift work to meet project schedule runs with one exception. Exception: the first week of their return will consist of an afternoon shift on Tuesday to perform as the shift operator.

### Section 6 - Regular Work Day

Regular work day for Employees will consist of an eight (8) hour work day including one-half (1/2) hour unpaid meal and two (2) 15 min. paid break periods. Overtime work shall be compensated at a rate of time and one half for all hours worked in excess of 40 hours in a work week or eight (8) hours in a work day. This provision shall not apply to employees assigned to a 4/10 schedule.

For employees working a regular work week, the first shift will be from 6:00 am to 2:30 pm; the second shift will be from 2:00 pm to 10:30 pm and third shift will be from 10:00 pm to 6:30 am.

### Section 7 - Overtime Distribution Policy

a. Purpose

The Company will make every reasonable effort to divide work among the Employees in each Department by classification and shift as impartially as is practicable. In doing this it is recognized that the Company will take into account the qualifications of Employees for the job to be performed and the efficient operation of the Department.

b. Procedures

**Step 1** -- In assigned overtime, Employees shall perform the overtime work required. Employees actively working the task requiring overtime shall perform

the overtime work required. If, in the event of extenuating circumstances, an Employee is unable to perform overtime work assigned, the overtime assignment shall be referred to the overtime distribution list for equitable distribution.

**Step 2** -- Employees will be offered overtime on the basis of the lowest overtime credited hours, provided they are qualified to perform the work.

**Step 3** -- The necessity for the Company to work overtime to provide rapid response to emergency overtime is recognized in order to meet customer service requirements. It is expected that Employees will continue to cooperate in working overtime for the Company's and Employee's best interests. If there is an insufficient number of Employees to perform the required work, Employees will be selected on the basis of their ability to perform the job in the reverse order of seniority. The least senior qualified person will be required to perform the needed work.

c. Overtime

Employees who do not want to be considered for assignments as part of the overtime distribution list will declare that fact, and it will be so designated by the Manager. Overtime will not be tracked for that Employee. If the Employee later desires to return to the distribution of such overtime, he will be credited as having the highest overtime, plus one hour, in their department and classification.

d. Emergency Overtime

Emergency overtime will be equitably distributed when possible. Emergency overtime will be recorded separately, but included in the total overtime hours.

e. New Hires

On their date of hire, new Employees will be credited with the highest overtime hours, plus one hour in the department and classification for distribution purposes.

f. Record Keeping

A written record of overtime worked by Employees in each Department will be maintained by the Employee's Manager. The overtime record will indicate the Employee's name and the date. Employees will be credited with overtime worked by recording the actual number of overtime hours worked. Employees unable to work overtime, when requested, shall be deemed to have worked the overtime hours actually worked on the task for distribution of overtime purposes.

Should the Company and the Union determine that an Employee was improperly denied overtime opportunities, the Company shall provide the Employee with

future available scheduled overtime, provided the Employee is qualified for the job to be performed and the efficient operation of the Department is not disrupted.

g. Time Sheets

This policy is for distribution of overtime hours worked. For pay purposes overtime hours are the hours recorded on the time sheet.

h. Implementation of Policy

To begin the overtime distribution process the Company will provide a report of year-to-date overtime worked. These hours will be transferred to an Overtime Distribution Record form.

Section 8 - Four-Ten Hour Shift

The Company may elect four/ten hour work shifts, either Monday through Thursday or Tuesday through Friday in order to meet the customer's needs. The Union and affected Employees will be given seven (7) working days notice prior to the commencement of the shift. The four/ten shifts will originally be established on a volunteer basis. If there are more volunteers than needed, the Employees with the most seniority will be awarded the four/tens provided they have the necessary skills to perform the job. If there are not enough Employees volunteering, the Employees with the least seniority will be required to work the four/tens provided they have the necessary skills to perform the job. On this four/ten shift, Employees will be paid time and one half (1-1/2) of their straight time hourly rate for all hours in excess of ten (10) hours per day and forty (40) hours in a week.

Employees who are assigned to the 4/10 schedule will be given holiday pay for holidays which fall on their regularly scheduled work days. During the last pay period of the calendar year, their holiday pay records will be reviewed and they will receive additional holiday pay to make the total holidays paid to them in that calendar year equal to eighty (80) hours.

Section 9 - Altered Work Schedule

The Company may assign Employees an altered work schedule (AWS) consisting of 8 hours between the hours of 6:00 a.m. and 6:00 p.m. to meet customer requirements. At least 3 days notice must be given before a new schedule is implemented. Employees may request an AWS outside of the normal work hours/days for personal needs. The AWS must ensure that customer support is maintained.

Section 10 - Overtime Calculations and Premium Days

- a. Time worked on Saturday and Sunday shall be paid at time and one-half (1-1/2) of the Employee's rate, and time worked on Holidays shall be paid at two and one half (2 1/2) times the Employee's rate.

- b. Holidays and personal leave shall be included as time worked for the purpose of calculating overtime.
- c. There will be no "pyramiding" of overtime allowed.

#### Section 12 - Call Out Pay

An Employee called back to work after having completed his/her regular shift and gone home, shall receive a minimum of four (4) hours at their straight time rate of pay or pay for actual hours worked whichever is greater.

#### Section 13 - Show Up Pay

An Employee reporting for work at his regular scheduled starting time and for whom no work is provided, shall receive three (3) hours show up time unless notified by the Company at least three (3) hours prior to their regularly scheduled starting time not to report to work.

#### Section 14 - Administrative Leave

When the site is closed due to weather or other catastrophic reasons, Employees will receive Administrative Leave only when reimbursement is allowed by the DOE.

### **ARTICLE IX - SENIORITY**

#### Section 1 - Seniority

- a. Site seniority is defined as a Bargaining Unit Employee's continuous service at the site with EG&G and all predecessor contractors.
- b. Bargaining unit seniority is defined as a bargaining unit member's continuous service earned under this Labor Agreement or predecessor Labor Agreement.
- c. The Company shall supply the Union with a job classification and site seniority list of the Employees covered by this Agreement. Such list(s) shall be revised annually.

#### Section 2 - Layoff

The Company will determine the time of layoffs, the number of Employees to be laid off, and in what job classifications layoffs will occur.

- a. If a layoff should occur, the Union shall be notified at least two (2) weeks in advance. Such layoffs shall be made by bargaining unit seniority within the job classification affected. Should bargaining unit seniority within a job classification be equal, then site seniority shall be the determining factor as to who shall be laid

off first. Should bargaining unit seniority and site seniority of the affected Employees be equal, then the determining criteria for breaking the tie shall be a flip of the coin with the Employee losing the coin flip being scheduled to be laid off.

- b. An Employee scheduled to be laid off within any classification may use his/her bargaining unit seniority to bump a less-senior bargaining unit Employee who holds a classification for which he/she is qualified. If bargaining unit seniority is equal, then site seniority shall be used as the tie-breaker. Recall to employment from layoff shall be in reverse order of the layoff.
- c. In the case of a layoff, temporary Employees shall be laid off first, followed by probationary employees.
- d. If at the time of layoff, any eligible Employee declines to exercise their seniority right to bump less senior Employees within the active workforce, such Employee shall continue to retain seniority rights to be recalled. Any Employee scheduled to be laid off must notify the Company of an intention to exercise his/her seniority bumping rights within two (2) working days of the layoff notice. An Employee displaced in the bumping process may similarly exercise his/her seniority rights to displace another Employee in accordance with the same criteria.

### Section 3 - Termination of Seniority

An Employee's seniority shall be terminated and his/her rights under this Agreement forfeited for the following reasons:

- a. Discharge for just cause, voluntary termination, retirement, or resignation.
- b. Failure to give notice of intent to return to work after recall within five (5) working days, or failure to return to work on the date specified for recall. An excuse from a medical doctor, leave secured by statute or a covered contractual situation, shall exempt an Employee from this return to work requirement. However, such circumstances must be communicated to the Employer within the five (5) day period outlined above.
- c. Time lapse of eighteen (18) months, or for a period equal to the Employee's seniority (whichever is less) since the last day of actual work for the Company.
- d. Failure to return to work upon expiration of a leave of absence.
- e. Absence in excess of 18 months due to physical disability; except where such absence is due to compensable disability incurred during the course of such employment, such absence shall not break continuous service, provided that such individual has returned to work within a seven (7) calendar day period after final payment of statutory compensation for such disability or after the end of the

period used in calculating a lump sum payment. Upon return to work from a period of disability, the Employee must present appropriate documentation verifying their availability date and medical release.

#### Section 4 - Recall

a. Order of Recall

If the Company determines to fill job vacancies, such vacancies shall be filled through the job posting and selection process from the active workforce first. All excess vacancies, not filled through this bidding procedure, or left vacant as a result of the bidding process shall be filled from the panel of laid off Employees awaiting recall who have the seniority and the qualifications to return to work and assume the job vacancy that is open. Such Employees, eligible for recall, shall be recalled in reverse order of layoff using seniority and qualifications to perform the duties of the job vacancy as the criteria for recall.

b. Notice of Recall

The Company will forward a notice of recall by certified mail to the last known address of the Employee reflected on records. The Employee must, within five (5) working days of delivery or attempted delivery of the notice of recall, notify the Company of his/her intent to return to work on the date specified for recall and thereafter, return to work on such date.

#### Section 5 - Job Posting

When the Company determines to fill a job within the Bargaining Unit, the Company will put a notice of the vacancy or job opening on the Employee bulletin boards for five (5) work days. Subject to the provisions elsewhere in this Agreement any Employee may submit a bid for the job to the Human Resources Office in writing, by placing it in the bid receptacle during the posting period. The Company shall not be required to post a notice of vacancy or job opening for a particular job more than once every sixty (60) calendar days. Any bid submitted within a posting period shall remain valid for sixty (60) days. If the Employer does not fill the vacant job within 60 days, regardless of the reason, and later decides to fill that vacancy, the bid must be reposted before the job can be awarded.

#### Section 6 - Selection

From among Employees qualified for a posted job, who submit bids for the job, the Company will award the job to the most senior/qualified Employee, provided that if two or more bidders have the same bargaining unit seniority, the Company will award the job to the Employee with the greater site seniority. If no Employees qualified for the posted job submit bids for the job, or no one from the recall panel is eligible to fill the vacancy, the Company may fill the job from any source.

Section 7 - Restriction on Bidding

An Employee who is awarded a job for which he/she bid, must accept it. If, immediately prior to being awarded a posted job, the Employee's designated job classification was the same as or higher than the posted job, the Employee may not bid for another job for a period of twelve (12) months after being awarded the job.

Section 8 - Disqualification of a Bidder

An Employee who is unable to perform the job to which he/she bid to the satisfaction of the Company within thirty (30) work days after being awarded the job shall be returned to the job classification he/she held at the time of submitting the bid.

Section 9 - Probationary Employees

A probationary period of ninety (90) calendar days will be observed for each new Employee during which time the Company will make specific and periodic evaluations of the Employee's qualifications, skills and abilities. During this probationary period, an Employee shall be considered as having no seniority rights, provided that upon completion of the probationary period, an Employee shall be entitled to seniority rights as measured from an Employee's employment date.

During the probationary period, a new Employee may be discharged in accordance with Company Policy and procedure without recourse to the grievance procedure.

Section 10 - Qualifications

It is agreed that the Company is the sole and exclusive agent to determine the qualifications, skills, and abilities of all Employees.

**ARTICLE X - HOLIDAYS**

Section 1 - Holidays Celebrated

The following days shall be paid holidays for the purpose of this Agreement:

1. New Year's Day
2. President's Day
3. Martin Luther King Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veteran's Day
9. Thanksgiving Day
10. Christmas Day



Holidays that fall on Sunday will be observed on the following Monday, and Holidays that fall on Saturday will be observed on the preceding Friday.

Section 2 - Eligible Employees

To be eligible for Holiday pay, an Employee must be on the active payroll of the Company, and be in a compensable state the day before and the day after the Holiday.

Section 3 - No Work on the Holidays

An Employee who is not required to work on the day observed as a Holiday shall receive eight (8) hours pay at his/her straight-time rate of pay, plus shift differential, if applicable.

Section 4 - Work on the Holiday

An Employee who is required to work on the day observed as a Holiday shall receive time and one-half (1-1/2) times his/her straight time hourly rate for all hours actually worked on that day, in addition to eight (8) hours pay at his/her straight time rate of pay plus shift differential, if applicable.

Section 5 - Holiday During a Personal Leave Period

If a Holiday occurs during the scheduled vacation of an eligible Employee, the Employee will not be charged a personal leave day for the Holiday, and the observed Holiday shall be paid as Holiday pay.

**ARTICLE XI - PERSONAL LEAVE**

Section 1 - Personal Leave

Years of Full-Time Service	Accrual Rate	Maximum Carry-Over
Less than two years	12 days	144 hours
Two to five years	15 days	192 hours
Five to ten years	18 days	240 hours
Ten to fifteen years	21 days	288 hours
Fifteen to twenty years	24 days	288 hours
Over twenty years	27 days	288 hours

- a. All full-time regular Employees in active payroll status (i.e., not on WC, A&S, or LWOP) during a pay period shall accrue a prorated amount of personal leave based on the schedules above. Employees will accrue personal leave based on years of full-time service. Personal leave may be taken in thirty (30) minute increments.
- b. Employees may carry over the maximum personal leave hours according to the above from one calendar year to the next. All personal leave above the maximum carry over will be paid to the Employee in the second payroll of January in the following year. All unused personal leave at the time of termination will be paid to the Employee in the final paycheck following termination.
- c. Employees will begin to accrue leave at the higher rate on the fifteenth of the month after the Employee completes the number of years of service required for the higher rate.
- d. Employees desiring to take personal leave must submit the request to his/her manager by 9:00 a.m. the day before leave is desired. Leave will be granted on a first come first serve basis. In some cases where submittals are made at the same time and only one Employee is allowed off due to the need to meet customer requirements, the personal leave request granted will be determined by seniority. In cases of emergency or illness, same day requests for personal leave must be made to the Employee's Manager for approval at least thirty (30) minutes prior to the Employee's scheduled start time.

#### Section 2 - Catastrophic Leave

Employees will accrue 2 hours of catastrophic leave per month into their leave account. Leave balances will be carried over from one year to the next.

### ARTICLE XI - LEAVES OF ABSENCE

#### Section 1 - Bereavement Pay

When death occurs in an Employee's immediate family (spouse, mother, father, mother-in-law, father-in-law, son, daughter, brother or sister, step-father, step-mother, step-children, step-brother or step-sister, grandfather, grandmother and grandchildren), an Employee upon request will be excused for up to three (3) consecutive day to include the day of the funeral. Upon the approval of Human Resources, an Employee may reserve one of the days for estate affairs at a later date. The Employee shall receive pay at his regular rate, provided it is established that he attended the funeral.

## Section 2 - Severance Pay

An Employee who is terminated shall be paid one (1) week's pay per year of service up to a maximum of fifteen (15) weeks (minimum of 1 week will be paid.)

## Section 3 - Jury Duty

An Employee who is called for and who performs jury duty or who is subpoenaed to appear in court as a witness will be compensated by the Company for the difference between payment received for such compulsory jury duty or compulsory court appearance and the payment the Employee would have received for straight time hours they thereby lose from a normal work schedule computed at the Employee's established hourly base rate as long as the Employee is not party in the legal action.

In order to be paid by the Company for such leave, the Employee must submit to Human Resources written proof of having served and the duration of such service.

## Section 4 - Military Service

Regular full-time Employees who are members of a military reserve organization and are ordered to temporary training duty are paid the difference for which their straight time pay exceeds their military pay, excluding travel allowances. Payment is made for up to ten (10) days of training in any calendar year. In support of this payment, Employees must furnish Human Resources a copy of their orders along with a voucher from their paymaster as soon as practical following their training.

## Section 5 - Business

Employees who have an official request from the UMWA for a leave of absence shall be granted leave to participate in Union activities. Unless agreed to by the, Company no more than two leave requests will be granted for Union activities on any given day.

## **ARTICLE XIII – MANAGEMENT'S RIGHTS**

The Union recognizes that the Company retains the sole right to manage its business, as such right existed prior to the execution of this Agreement except only as expressly abridged by a specific provision of this Agreement. The Company reserves and retains, solely and exclusively, all of its inherent rights to manage the business including, but not limited to:

- a. The direction of the working force including the right to hire and decide the number of Employees required and to make rules governing the conduct of the working force which will be applied in a reasonable fashion.
- b. Determine work methods and procedures, and to issue, amend and revise policies, rules, regulations, and practices.

- c. Require all Employees to observe all safety regulations prescribed by the Company and/or the Government and to work safely.
- d. Discharge, suspend, or discipline Employees for just cause.
- e. The Company may, if it desires, maintain a variety of skills within its group of Employees to be prepared to have skills and/or supervision for any type of work that may arise.
- f. The Union understands the extreme importance of keeping operating equipment, units, and facilities running at all times. The Union also understands that the loss of production and the cost of repairs together create a great loss to the customer. Therefore, the Union will encourage and advise the Employees to exhaust every effort, ways and means to perform work of good quality and quantity. The Company and the Union recognize the necessity for eliminating restrictions and promoting efficiency and agree that no rules, customs or practices shall be permitted that limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an Employee shall perform, nor shall there be any restrictions against the use of any kinds of machinery tools or labor-saving devices.
- g. It is understood by the Company and agreed to by the Union, that the Employees of the Company will perform the work requested by the Company without having any concern or interference with any other work performed by any Employees who are not covered by this Agreement doing non-bargaining unit work.
- h. The Company's failure to exercise any right, prerogative, or function in a particular way, shall not be considered a waiver of the Company's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the expressed provision of this Agreement. In exercising its rights under this Article, the Company shall not violate the provision of this Agreement.

#### ARTICLE XIV - PERIODIC CONFERENCES

The parties recognize for their joint benefit, the prosperity and efficiency of the Company are dependent upon their ability to work cooperatively. In order to achieve this, the parties agree to meet periodically, but not less than three (3) times per year, to discuss items of mutual interest. The Company shall designate three (3) representatives and the Union shall designate three (3) representatives to participate in the conference. Union representatives that are the Employees of the Company shall be compensated at their applicable straight time rate for their time spent in conference.

## **ARTICLE XV - BULLETIN BOARDS**

The Employer will provide a bulletin board or bulletin boards for the use of the Local Union on the property that are in conformity with government regulations and which provide reasonable access by the Union membership to information that the Union wishes to communicate.

## **ARTICLE XVI - SAFETY**

### Section 1

The Company will comply with all applicable health and safety laws and regulations, and the Company and all Employees agree to cooperate toward the objective of eliminating accidents and health hazards. The Company will continue to make reasonable provisions for the safety and health of its Employees during the hours of their employment. The Union agrees that the Company may terminate any Employee covered by this Agreement who intentionally exposes him/herself or any individual to unsafe acts, which could result in serious bodily harm. All Employees must immediately report any work-related injury, as per site policy. An Employee may not be discriminated against for following this procedure.

### Section 2

The Company and the Union agree to establish a quarterly meeting to cooperate in the elimination of unsafe and hazardous conditions and the improvement of the safety record. The committee will consist of three (3) representatives from Management and three (3) representatives from the Union.

### Section 3

All Employees will follow the Company's Safety Operating Policies and Procedures, as well as NETL's Environmental Safety and Health Program. Copies of these policies and programs will be available to all Employees on the Local Area Network (LAN) and in the Company's office of Environmental Safety and Health (ES&H). Any new safety policies and/or procedures established by the Company shall be posted on the Intranet.

### Section 4

District and/or International Representatives requesting access to the site to discuss safety matters/incidents with Management personnel shall be granted access subject to the routine check in/out procedures as set forth in Article III, Section 1.

### Section 5

In cases involving major accidents or fatalities of bargaining unit Employees, the Union Steward will be allowed to participate in the Company's investigation of the incident.

## **ARTICLE XVII - NEW EQUIPMENT**

In the event that new equipment or devices are introduced and are to be operated or maintained by bargaining unit Employees, the Company agrees to provide training on such equipment on an as needed basis. The Employees, and the manner in which they are trained, will be determined by the Company.

## **ARTICLE XVIII - SUCCESSORSHIP**

The provisions of this Agreement shall be binding upon and to the mutual benefit of the Parties thereto, and to their successors and assigns, except as may otherwise be provided by applicable law or federal regulations.

## **ARTICLE XIX - NO STRIKE - NO LOCKOUT**

The Company agrees there will be no lockout of the Union or of Employees represented by the Union during the term of this Agreement.

The Union, collectively, and the Employees covered by this Agreement, agree they will not call, engage in or sanction any strike during the term of this Agreement.

## **ARTICLE XX - TEMPORARY/PART-TIME EMPLOYEES**

No one may be retained in a temporary or part-time capacity while any full-time Employee is on layoff. Temporary/part-time Employees may never exceed fifteen percent (15%) of the full-time classified workforce even when there is no reduction in force/layoff. Temporary Employees with an anticipated employment not to exceed six (6) months will receive \$1.65 per hour in lieu of benefits. Part-time Employees will receive \$1.65 per hour in lieu of benefits.

## **ARTICLE XXI - CONTINUANCE OF EMPLOYER PROVIDED APPAREL AND TOOLS**

The Company agrees to continue the practice of providing Employees with certain wearing apparel, tools and safety devices, including, but not limited to, steel toed boots and shoes, uniforms, safety glasses, gloves, and other items previously provided to the Employee for his or her use in carrying out their duties. In the event that the government, for whatever reason, decides to discontinue certain programs that provide any of these items, the Union will immediately negotiate with the Employer with respect to the impact that such changes have had on its membership.

## ARTICLE XXII - HEALTH BENEFITS

Effective April 1, 2003, the Company will provide the United Health Care High Option Plan (or its equivalent) or the Cigna HMO (or the equivalent.) Monthly Employee contributions will be as listed below. Any and all increases in the monthly premium will be borne 50/50 by the Company and Employee up to a maximum increase of eight percent (8%). Should increases in the monthly premium exceed eight (8) percent, the Company may request that the Union meet to negotiate the amount exceeding eight (8) percent.

### United Health Care High Option Plan

	<u>Monthly</u>	<u>Bi-weekly</u>
Employee Only	\$ 48.42	\$ 22.35
Employee/Spouse	\$ 96.85	\$ 44.70
Employee/Child(ren)	\$ 87.16	\$ 40.23
Family	\$135.59	\$ 62.58

### Cigna HMO

	<u>Monthly</u>	<u>Bi-weekly</u>
Employee Only	\$ 39.81	\$ 18.37
Employee/Spouse	\$ 79.62	\$ 36.75
Employee/Child(ren)	\$ 71.66	\$ 33.07
Family	\$111.47	\$ 51.45

Employees may opt to waive health insurance coverage and receive a waiver paid on a bi-weekly basis. Employees must furnish proof of other health coverage to qualify for the waiver. Employees may receive the following waivers:

Individual (Employee only) coverage	\$500
Dependent (Spouse or family) coverage	\$500

## ARTICLE XXIII - DENTAL PLAN

The Company will provide the Cigna Dental PPO or equivalent plan at a monthly cost of \$15.00 for employee only and \$20.00 for family. This rate will remain in effect for the life of the agreement.

## ARTICLE XXIV - SCHEDULE OF OTHER BENEFITS

### Section 1 - Life Insurance/AD&D

The Company will provide Life Insurance as currently stated in the Summary Plan Description, equal to one (1) times the Employee's annual salary rounded up to the next thousand dollars.

The Company will also provide AD&D as currently stated in the Summary Plan Description, equal to one (1) times the Employee's annual salary rounded up to the next thousand dollars. The rates for dismemberment/loss of sight, etc., will also follow the current Summary Plan Description.

#### Section 2 - Long-Term Disability

Employees may participate in the Long-Term Disability (LTD) Insurance Program as described in the LTD Summary Plan Description.

#### Section 3 - Retirement

The Company will provide a pension plan as described in the Company's Summary Plan Description for the life of the Agreement.

#### Section 4 - 401K/Savings Program

The Company will continue to provide the Employee's the 401K/Savings Plan pursuant to the Summary Plan Description which currently provides a fifty-five cent (\$.55) match on each dollar contributed by a participating employee up to six (6) % of his/her salary.

#### Section 5 - Dependent Life Insurance Plan

Employees may participate in the Company's Dependent Life Insurance Program as described in the Summary Plan Description.

#### Section 6 - Accident & Sickness (A&S)

The Company will provide A&S insurance as stated in the current Summary Plan Description, equal to two thirds (2/3) of the Employee's weekly base rate up to a maximum of eight hundred (\$800) dollars per week.

#### Section 7 - Vision

Employees may elect to participate in the Company's optional vision plan at the employee's expense as provided for by the Company.

#### Section 8 - Award Fee Share

Bargaining unit members will receive 25% of the calculated employee Award Fee shared in accordance with Company policy.



**ARTICLE XXV - TERM OF AGREEMENT**

This Agreement shall take effect March 27, 2003 and shall remain in effect through February 28, 2006, and shall continue in effect from year to year thereafter, unless changed or terminated. Either party desiring to change or terminate this Agreement must notify the other in writing at least sixty (60) days prior to March 1, 2006.

**IN WITNESS WHEREOF**, each of the parties signatory hereto has caused this Agreement to be signed this 27th day of March, 2003.

Richard Eddy      3/27/03  
For the Union      Date

Susan Stotson      03/27/03  
For the Employer      Date



APPENDIX A - WAGES

1. On January 1, 2003, all Employees covered by this contract shall receive a seventy-five cent (\$.75) increase in their wages.
2. On January 1, 2004, all Employees covered by this contract shall receive a seventy-five cent (\$.75) increase in their wages.
3. On January 1, 2005, all Employees covered by this contract shall receive a seventy-five cent (\$.75) increase in their wages.
4. All Employees will receive a fringe benefits adjustment of \$300 in their April 4, 2003 pay.

JOB TITLES	1-Jan-03	1-Jan-04	1-Jan-05
Computer Technician 1	\$ 12.25	\$ 13.00	\$ 13.75
Computer Technician 2	\$ 18.75	\$ 19.50	\$ 20.25
Computer Technician 3	\$ 19.75	\$ 20.50	\$ 21.25
Computer Technician 4	\$ 20.75	\$ 21.50	\$ 22.25
Computer Technician 5	\$ 21.75	\$ 22.50	\$ 23.25
Electrical Technician 1	\$ 13.33	\$ 14.08	\$ 14.83
Electrical Technician 2	\$ 17.20	\$ 17.95	\$ 18.70
Electrical Technician 3	\$ 19.10	\$ 19.85	\$ 20.60
Electrical Technician 4	\$ 21.55	\$ 22.30	\$ 23.05
Electrical Technician 5	\$ 25.38	\$ 26.13	\$ 26.88
ES&H Technician 1	\$ 13.33	\$ 14.08	\$ 14.83
ES&H Technician 2	\$ 17.20	\$ 17.95	\$ 18.70
ES&H Technician 3	\$ 19.10	\$ 19.85	\$ 20.60
ES&H Technician 4	\$ 21.55	\$ 22.30	\$ 23.05
ES&H Technician 5	\$ 22.55	\$ 23.30	\$ 24.05
Facilities Maintenance Technician 1	\$ 13.33	\$ 14.08	\$ 14.83
Facilities Maintenance Technician 2	\$ 17.20	\$ 17.95	\$ 18.70
Facilities Maintenance Technician 3	\$ 19.10	\$ 19.85	\$ 20.60
Facilities Maintenance Technician 4	\$ 21.55	\$ 22.30	\$ 23.05
Facilities Maintenance Technician 5	\$ 22.55	\$ 23.30	\$ 24.05
Fleet Operator	\$ 17.20	\$ 17.95	\$ 18.70
HVACR Technician 1	\$ 13.33	\$ 14.08	\$ 14.83
HVACR Technician 2	\$ 17.20	\$ 17.95	\$ 18.70
HVACR Technician 3	\$ 19.10	\$ 19.85	\$ 20.60
HVACR Technician 4	\$ 21.55	\$ 22.30	\$ 23.05
HVACR Technician 5	\$ 23.21	\$ 23.96	\$ 24.71
Stationary Engineer Technician 1	\$ 13.33	\$ 14.08	\$ 14.83
Stationary Engineer Technician 2	\$ 17.20	\$ 17.95	\$ 18.70
Stationary Engineer Technician 3	\$ 19.10	\$ 19.85	\$ 20.60
Stationary Engineer Technician 4	\$ 21.55	\$ 22.30	\$ 23.05
Stationary Engineer Technician 5	\$ 24.57	\$ 25.32	\$ 26.07
Mobile Equipment Repair Technician	\$ 19.10	\$ 19.85	\$ 20.60
Storeroom Attendant 1	\$ 11.35	\$ 12.10	\$ 12.85
Storeroom Attendant 2	\$ 13.60	\$ 14.35	\$ 15.10
Storeroom Attendant 3	\$ 15.11	\$ 15.86	\$ 16.61

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**



**AND THE**

**UNITED MINE WORKERS OF AMERICA  
CLERICAL UNIT**

February 1, 2001 THROUGH January 31, 2004

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## **ARTICLE I - PURPOSE**

It is the intent and purpose of the Company and the Union to establish, through this agreement, the wages, hours of work, and conditions of employment about which the Company and the Union bargained for the Employees of the Company in the unit defined herein; to provide a procedure for processing disputes between the Company and the Union as to the interpretation and application of the provisions of this Agreement; and generally to govern the relationship between the Company and the Union and its members.

The Union recognizes the necessity to achieve efficiency in production and acknowledges that it is the further purpose of this Agreement to prevent interruptions of work and interference with the efficient operation of the Company's business. It is the intent and purpose of the parties to promote harmony between the Company, its employees, and the Union for the efficient and successful operation of the Company's contract with the government so that the employees and the Company may mutually benefit.

Except as specified in this Agreement, the Union and the Employees it represents are not waiving rights, which exist under the National Labor Relations Act to bargain over Employees' wages, hours, and working conditions. Nor do the Union and the Employees it represents waive any right to challenge any governmental action that would dictate a change in a term and condition of employment provided for under this Agreement.

The Company and the Union mutually agree not to discriminate in any way against any Employee with respect to hiring, compensation and terms or conditions of employment because of applicable laws relating to the disabled and Vietnam-era Veterans. Neither the Company nor the Union shall discriminate against any Employee on the basis of race, creed, national origin, gender, age, and political activity or otherwise.

## **ARTICLE II - SCOPE AND COVERAGE**

The Company hereby recognizes the Union as the exclusive bargaining representative for the purpose of bargaining collectively as required by Section 8D of the NLRA with respect to wages, hours and other conditions of employment, for the Company's Employees regularly assigned to the following bargaining unit, all full-time and regular part-time clerical employees, including secretaries, senior clerks, word processing operators, senior clerks to DOE Division Manager of Office Management, and senior clerk to DOE Associate Director for Project Management employed by the Employer at the Department of Energy (DOE) National Energy Technology Laboratory at Collins Ferry Road, Morgantown, WV on the Site Operations Contract.

Managers and Supervisors shall not perform bargaining unit work except in cases of emergency or Employee training/instruction.

## **ARTICLE III - REPRESENTATION**

### **Section 1 - Representative**

The Representative of the Union shall have access to the shops and office of EG&G at the National Energy Technology Laboratory (NETL) for the purposes of adjusting disputes, investigating working conditions, and ascertaining that the Agreement is being adhered to, providing there is no interruption of the Company's business and providing further that (a) the Union Representative notifies the Company's Human Resources Representative in advance of any visit and (b) prior to entering any facilities under the control of the Company, the visiting representative reports to the Human Resources Office or the Operational Manager's Office in their absence.

### **Section 2 - Shop Stewards**

The Company recognizes the right of the Union to designate one (1) Steward and one (1) Alternate for site support clerical employees. The authority of the Steward so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

- a. The investigation and presentation of grievances in accordance with the provisions of this collective bargaining agreement.
- b. The transmission of such messages and information as shall originate with, and are authorized by the Union or its officers.

### **Section 3 - Scope of Stewards' Union Activities**

The Stewards' Union activities on Company time shall fall within the scope of the following functions:

- a. To investigate a complaint or grievance and to present a complaint or grievance to an Employee's immediate manager in an attempt to settle the matter for the Employee or group of Employees who may be similarly affected.
- b. To meet by appointment with an appropriate manager or other designated representative of the Company, when necessary, to adjust grievances in accordance with the Grievance Procedure of the Agreement.
- c. The Steward shall be allowed to perform these duties during the Steward's working hours without loss of compensation. The performance of these duties shall be limited to a reasonable amount of time per shift.
- d. The duties specified above shall not relieve the Steward of his/her duties, and obligations as an Employee of the Company, and he/she shall continue to be subject to all rules, regulations, and procedures applicable to other Employees. The Steward shall notify his/her immediate manager before leaving the work area to conduct Union business.

### **Section 4 - Checkoff**

The membership dues, including initiation fees, and assessments of the United Mine Workers of America and its various subdivisions, credit, voluntary COMPAC contributions and other voluntary deductions, the Union-sponsored group auto insurance, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employers covered by this contract and shall be remitted by the Employers to the properly designated officers of the Union for distribution to its various branches. Such remittance shall be made within 30 days of the date such amount has been checked off. The Employer shall also submit an itemized statement showing the name of each Employee, his/her Social Security number, hours worked, and the amount checked off for dues, initiation fees, and assessments. Such itemized statement shall be made within 60 days of the date the check-off has been made, and shall include a list of Employees from whom dues, initiation fees, and assessments have not been collected.

In order that this section may become effective and operate within the limitations of the Labor-Management Relations Act of 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the respective Employers, and the Employers agree to aid, assist and cooperate in obtaining, written authorizations from each Employee so employed. Upon the presentation to the Employers of such authorizations in such reasonable form as time and circumstances may allow, said Employers shall make deductions so authorized and deliver the same to the designated District officer of the Union or to such authorized representative as may be designated by the Union.

### **Section 5 - Notification**

The Union shall notify the Company of the amount of dues to be withheld by the Company, and shall advise the Company in writing at least two (2) months prior to any change in the amount to be withheld.

## Section 6 – Membership

It is agreed that all employees coming under the terms of this Agreement shall be required to make application to, and become members of, the Union within thirty (30) days of their employment. In the event an employee does not become a member of the Union within the time frame prescribed above, the Union will approach management and request that the employee be terminated from any employment that is covered under this Agreement. The Union agrees to hold the Company harmless from any action that may come about as a result of the application of this section.

## ARTICLE IV – MANAGEMENT RIGHTS

The Union recognizes that the Company retains the sole right to manage its business, as such right existed prior to the execution of this Agreement except only as expressly abridged by a specific provision of this Agreement. The Company reserves and retains, solely and exclusively, all of its inherent rights to manage the business including but not limited to:

1. The direction of the working force including the right to hire and decide the number of employees required and to make rules governing the conduct of the working force, which will be applied in a reasonable fashion.
2. Determine work methods and procedures, and to issue, amend, and revise policies, rules, regulations, and practices.
3. Require all employees to observe all safety regulations prescribed by the Company and/or the Government and to work safely.
4. Discharge, suspend, or discipline employees for just cause.
5. The Company may, if it desires, maintain a variety of skills within its group of employees to be prepared to have skills and/or supervision for any type of work that may arise.
6. The Union understands the extreme importance of keeping operating equipment, units, and facilities running at all times. The Union also understands that the loss of production and the cost of repairs together create a great loss to Government. Therefore, the Union will encourage and advise the employees to exhaust every effort, ways, and means to perform work of good quality and quantity. The Company and the Union recognize the necessity for eliminating restrictions and promoting efficiency and agree that no rules, customs, or practices shall be permitted that limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kinds of machinery tools or labor-saving devices.
7. It is understood by the Company and agreed to by the Union, that the employees of the Company will perform the work requested by the Company without having any concern or interference with any other work performed by any employees who are not covered by this Agreement doing non-bargaining unit work.
7. The Company's failure to exercise any right, prerogative, or function in a particular way, shall not be considered a waiver of the Company's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the employees provision of this Agreement. In exercising its rights under this Article, the Company shall not violate the provision of this Agreement.

## ARTICLE V - GRIEVANCE PROCEDURE

### Section 1

All grievances that may arise will be handled in the following manner. Any grievance must be filed within five (5) working days of the event given rise to the grievance. The five (5) days shall be considered from the time the grievant should have reasonably known of the grievance. In cases involving dismissals for cause, the grievance may be instituted at step three. In all steps, the grievant shall have the right to be present and at his/her request be accompanied by his/her Union representative

Step 1 - Prior to processing any written grievance, any Employee who believes he/she has a grievance must discuss it with his/her immediate manager, with the option of having his/her steward present. If the Employee is dissatisfied with the answer given by his/her manager or no answer is given within five (5) normal working days, the grievance shall be submitted at Step 2.

Step 2 - Within three (3) normal working days following the Manager's answer from Step 1 or if no answer is given, the Employee and his/her steward shall present to the Human Resources Representative a written grievance form that has been approved by the Union and the Company, stating what the grievance is and the remedy sought. If the Human Resource Representative's decision is not satisfactory, or is not given within five (5) normal workdays, the grievance shall be submitted at Step 3.

Step 3 - The grievance shall be forwarded by the Union steward to the Operations Manager or his/her designated representative within three (3) normal workdays after the Human Resource Representative's unsatisfactory written decision, or failure to give a decision. The Operations Manager shall meet with the appropriate district representative or his/her designated representative within five (5) days of receipt of the grievance. If the Operation's Manager's decision is not satisfactory or is not given within five (5) normal working days, the grievance shall be submitted at Step 4

Step 4 - Upon mutual agreement the grievance may be forwarded to final and binding mediation as stated under Article VI of this Agreement for its resolution. Any other grievance unresolved in Step 3 of this grievance procedure shall be moved into Step 5 of this grievance procedure, which is final and binding arbitration.

Step 5 - The Union may, no later than five (5) working days after receipt of the Company's decision in Step 3 submit the matter to arbitration by requesting that the Federal Mediation and Conciliation Service (FMCS) submit a list of five (5) names of arbitrators, from which the Company and the Union shall choose an impartial arbitrator to decide the matter. Following receipt of the list of names, of arbitrators the parties shall then alternately strike the names from the panel and the name remaining shall be the Arbitrator in the case. The determination of which Party is to strike first shall be determined by a coin flip. Striking shall take place within seven (7) days of receipt of the arbitrators list.

### Section 2

In arbitration proceedings, the expense of the impartial Arbitrator shall be shared by both parties. The parties will be responsible for paying their own representatives and witnesses

### Section 3

All arbitration hearings shall be held at a mutually agreed upon neutral location with the Company and the Union agreeing to equally share expenses incurred in the hearing room.

### Section 4

The findings of the arbitrator shall be final and binding on all parties



## **Section 5**

All time limits stated in this article shall be treated as jurisdictional in nature and the failure to follow any of the set time limits shall result in the grievance being void and waived and the matter shall end without resort to mediation/arbitration. A normal workday is defined as any day on which a bargaining unit Employee is at work Monday through Friday, except holidays.

## **Section 6**

Except by mutual written Agreement to the contrary, only one grievance shall be taken to arbitration at any time before the same arbitrator.

## **Section 7**

The impartial Arbitrator shall only have jurisdiction and authority to determine the meaning, application of, or compliance with provisions of this Agreement and shall not have jurisdiction or authority to add or detract from or alter in any way such provisions or any rules of discipline attached hereto

## **Section 8**

Time frames pursuant to discharge shall be commensurate with provisions of Article VIII, Discharge/Arbitration of this Labor Agreement. In these cases arbitrators shall be selected immediately by the parties pursuant to Article V, Section 1, Step 5, Grievance Procedure, as it pertains to the Arbitrator selection process, and the actual arbitration shall be held as expeditiously as possible following the time it is referred to arbitration at Step 4.

## **Section 9**

Time limitations may be waived by mutual Agreement of both parties.

## **ARTICLE VI - MEDIATION**

The parties to this Agreement are jointly committed to the resolution of all disputes that arise under the Contract between the parties and committed to resolve these disputes in as timely and cost-effective manner as possible. In that light, the Parties agree to embrace the concept of final and binding mediation within certain defined areas as addressed within this Article.

### **Section 1 - Mediation**

Upon mutual agreement the Company and the Union can mutually agree to submit any grievance to final and binding mediation as an alternative to arbitration. If mutual agreement is not met, Step 5 of the grievance procedure will prevail.

### **Section 2 - Selection**

- a As one option in mediation, the Company and the Union can mutually agree to choose an independent mediator. A mediator chosen by the parties shall possess baseline qualifications to even be considered as acceptable to hear the disputes under this Agreement. Such a candidate must have a background in dispute resolution even though he or she may not have been a mediator or arbitrator in the past. Such qualifications shall be an understanding of the labor-management process as it relates to collective bargaining. He or she must also have knowledge of the terminology and principles that are inherent in collective bargaining Agreements including, but not limited to, the concept of seniority, pay grades and pay principles, Employee/Employer benefit programs, and be able to hear testimony, and be able to draw upon his/her experience in rendering fair and forthright award determinations

Such a mediator must agree to work under the principles and compensation scale as set forth by the parties under this Contract. If the Company and the Union cannot mutually agree on a mediator, or if they are unable to locate a mediator that is determined to be suitable, but wish to pursue mediation, option (b) below will be followed.

- b. As a second option in mediation, the parties will request a panel of mediators from FMCS in the same manner as described in Step 5 of the grievance procedure for arbitrators. Selection will also be in accordance with Step 5 of the grievance procedure. Both parties agree that a request for mediation must be submitted by the grieving party within five (5) working days after the receipt of the Company's answer to Step 3 or the right to mediate that grievance is forfeited.

### **Section 3 - Cost of Mediation**

The expense and fees of the Mediator shall be borne equally by the Company and the Union. Each party shall pay any and all expenses for their own representatives and witnesses. The Parties will strive to keep mediation expenses at a maximum of five hundred dollars (\$500) per case or two hundred and fifty dollars (\$250) for each party exclusive of their witness fees or other compensation for their respective persons who will provide testimony.

### **Section 4 - Mediator's Authority**

The Mediator shall have the authority to make such binding awards as are necessary to enable him/her to act effectively subject to the following:

The decision of the Mediator shall be binding upon the Company, the Union, and the aggrieved Employee or Employees. The Mediator shall have no power to add or subtract from or modify any of the terms of this Agreement or any Agreements made supplementary hereto, or to substitute his/her discretion in cases where the Company is given discretion by this Agreement or by any Supplementary Agreements.

## **ARTICLE VII - DISCIPLINARY PROGRAM AND DISCHARGE**

### **Section 1 - Disciplinary Program**

No one may be disciplined or discharged without just cause. Discipline will be applied without discrimination on account of race, color, religion, gender, age, national origin, disability, or veteran's status. The procedure will be carried out uniformly in accordance with the following steps:

- |                                 |                                                                                                                   |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <b><u>1. First Offense</u></b>  | Verbal warning, record on file with Department Manager and Local Steward.                                         |
| <b><u>2. Second Offense</u></b> | Written warning with record on file with the Human Resource Office, Copy given to the Local Union Steward.        |
| <b><u>3. Third Offense</u></b>  | Two working days off without pay, record on file with the Human Resource Office, copy to the Local Union Steward. |
| <b><u>4. Fourth Offense</u></b> | Discharge.                                                                                                        |

In case of serious offenses, which affect customer relations (and thus jeopardize the jobs of fellow workers), or which could result in injury or death, to the Employee, fellow workers, or the public, the Employer shall have the right to bypass any or all of the progressive discipline steps and may discipline or discharge the Employee immediately subject to the arbitration procedure. These offenses shall include, but shall not be limited to, the following:

1. Possession, use, sale, or distribution of illegal substances and/or intoxicating beverages on the work site.
2. Bringing firearms or other weapons on the job.
3. Intentional theft of Government, Employer, or Employee property.
4. Intentional destruction of Government, Employer, or Employee property.
5. Intentional fraudulent activity.
6. Intentional falsification of Government or Company documents.

Disciplinary actions will remain in an Employee's personnel file for a maximum period of one year unless otherwise designated by the Company.

## **Section 2 - Attendance Control**

Excessive use/abuse of absenteeism or tardiness increases costs, creates an undue hardship on fellow employees, and limits ability to effectively plan and accomplish and customer goals. Any Employee requesting time off must have prior approval of their manager or his/her designee. An unexcused absence is an absence that does not have prior approval of management or an absence without sufficient and appropriate documentation upon return to work. Employees absent for three (3) consecutive working days without a valid excuse or proper authorization may be considered to have voluntarily quit. Otherwise, the policy toward absenteeism will be as follows:

1. Unexcused absence or tardy / first occurrence / Verbal warning.
2. Unexcused absence or tardy / second occurrence / Written warning.
3. Unexcused absence or tardy / third occurrence / 3 day suspension.
4. Unexcused absence or tardy / Fourth occurrence / Termination.

All disciplinary actions will remain in the Employee's personnel file for a period of one year.

## **ARTICLE VIII - DISCHARGE/ARBITRATION**

In cases of discharge, the Company shall notify the Local Union President and/or Union steward of the discharge and its reason for such action in writing within two (2) working days. An Employee who claims he/she has been discharged without just cause must notify the Union within two (2) working days following the discharge. Notice that a discharge is being grieved must be made to the Company, in writing by the Union, within five (5) working days from the date of discharge. Discussions between the Company and the Union Representative concerning the discharge shall be considered Step 3. If not settled in Step 3, the Union may move the grievance to Step 5 of the grievance procedure.

## **ARTICLE IX - GENERAL WAGE PROVISIONS**

### **Section 1 - Wage Rates**

The hourly rates for Employees covered by this Agreement shall be as set forth in Appendix "A." Wages shall be paid bi-weekly.

### **Section 2 - Shift Differentials**

In the event that shifts are needed in the clerical unit, the Company shall pay a shift differential of 5% for those employees assigned to the second shift and a shift differential of 7% for those employees assigned to the third shift.

### **Section 3 - Out of Classification Work**

When a qualified Employee is specifically assigned to and works independently for a period of two (2) hours

or more in a higher job classification, the Employee will receive the rate of the higher classification for the duration of his/her performance of the job

#### **Section 4 - Schedule Changes**

An Employee's schedule shall not be changed for the explicit purpose of avoiding overtime.

#### **Section 5 - Tuition Refund**

Tuition refund will be provided in accordance with company policy.

#### **Section 6 - Educational Assistance**

The Company agrees to provide reimbursement of lost wages and expenses for Employees attending and successfully completing courses offered by the Union and with prior approval by the Company (e.g. Safety programs, labor management cooperative programs, etc.)

#### **Section 7 - Travel Policy**

Travel expenses will be reimbursed in accordance with Company policy.

#### **Section 8 - Incentive Award**

Bargaining unit employees will participate in the Company's Incentive Award Plan in accordance with the Company's Employee Incentive Award Plan Policy.

### **ARTICLE X - HOURS AND OVERTIME**

#### **Section 1 - Workday**

The workday shall begin at 12:01 a.m. and shall end at 12:00 midnight. The third shift, which normally begins at 11:00 p.m., will be considered the first shift of the following day.

#### **Section 2 Workweek**

For payroll purposes the workweek shall begin at 12:01 a.m. Saturday and shall end at 12:00 midnight the following Friday.

#### **Section 3 - Regular Workweek**

The regular workweek for Employees will consist of five (5) workdays during the period Monday through Friday, with two (2) consecutive days off (Saturday & Sunday), except for shift work, which may be five (5) workdays during the period Monday through Sunday with two (2) consecutive days off.

#### **Section 4 - Regular Workday**

The regular workday for Employees will consist of an eight (8) hour workday including a one-half (1/2) hour unpaid meal and two (2) 15 min. paid break periods to be taken at mid-morning and mid-afternoon.

#### **Section 5 - Shifts**

First shift shall be any shift beginning after 6:00 a.m. Second shift shall be any shift beginning after 2:00

p.m. Third shift shall be any shift beginning after 10:00 p.m. Shift differential shall be paid for any shift beginning after the stated shift times above.

While shifts are not normally needed in the clerical fields, when a shift is needed to respond to customer need, the Company will provide notice of a shift change to affected Employees no later than 2:00 p.m. Thursday in the week prior to the proposed shift change.

### **Section 6 - Altered Work Schedule**

The Company may assign Employees an altered work schedule (AWS) consisting of eight (8) hours between the hours of 6:00 a.m. and 6:00 p.m. to meet customer requirements. At least three (3) days notice must be given before a new schedule is implemented. Employees may request an AWS outside of the normal work hours/days for personal needs. The AWS must ensure that customer support is maintained.

### **Section 7 - Flex Time**

Employees may request flexible starting and quitting times on a daily/weekly basis. Core hours between 9:00 a.m. and 3:00 p.m. must be maintained. The Employee's manager may approve flexible schedules for regular hours between 6:00 a.m. and 6:00 p.m. with complete consideration given to adequate staffing to ensure customer needs. All schedules must be approved in advance by the manager or his/her designee.

### **Section 8 - Overtime Work**

Overtime worked shall be compensated at the rate of time and one-half (1-1/2) for all hours worked in excess of forty (40) hours in a work week or 10 hours in a work day.

### **Section 9 - Overtime Calculations and Premium Days**

- a. Time worked on Saturday and Sunday shall be paid at time and one-half (1-1/2) of the Employee's rate, and time worked on Holidays shall be paid at two and one-half (2 1/2) times the Employee's rate.
- b. Holidays and personal leave shall be included as time worked for the purpose of calculating overtime
- c. There will be no "pyramiding" of overtime allowed.

### **Section 10 - Call Out Pay**

An Employee called back to work after having completed his/her regular shift and gone home, shall receive a minimum of four (4) hours at their straight time rate of pay or pay for actual hours worked whichever is greater

### **Section 11 - Show Up Pay**

An Employee reporting for work at his regular scheduled starting time and for whom no work is provided, shall receive three (3) hours show up time unless notified by the Company at least three (3) hours prior to their regularly scheduled starting time not to report to work.

### **Section 12 - Administrative Leave**

When the site is closed due to weather or other catastrophic reasons, Employees will receive Administrative Leave only when reimbursement is allowed by the DOE.

### **Section 13 - Overtime Distribution Policy**

- a. Purpose - The Company will make every reasonable effort to distribute overtime as equitable as possible among the Employees in each functional area as impartially as is practicable. In doing this it is recognized that the Company will take into account the qualifications of Employees for the job to be performed and the efficient operation of the Department.
- b. Procedures - In assigned overtime, Employees shall perform the overtime work required. Employees actively working the task requiring overtime shall perform the overtime work required. In the event of extenuating circumstances an Employee is unable to perform overtime work assigned, the overtime will be distributed amongst the employees in that functional area qualified to perform the work.
- c. Record Keeping - A written record of overtime worked by Employees in each functional area will be maintained by the Employee's manager. The overtime record will indicate the Employee's name, the date worked/offered, and the number of hours. Employees will be credited with overtime worked by recording the actual number of overtime hours worked. Employees unable to work overtime, when requested, shall be deemed to have worked the overtime hours actually worked on the task for distribution of overtime purposes.  
  
Should the Company and the Union determine that an Employee was improperly denied overtime opportunities, the Company shall provide the Employee with future available scheduled overtime, provided the Employee is qualified for the job to be done and it does not disrupt the efficient operation of the Department.
- d. Time Sheets - This policy is for the equitable distribution of available overtime hours. For pay purposes overtime hours are the hours recorded on the time sheet

### **Section 14 - Four-Ten Hour Shift**

The Company may elect four/ten hour work shifts, either Monday through Thursday or Tuesday through Friday in order to meet the customer's needs. The Union and affected Employees will be given seven (7) working days notice prior to the commencement of the shift. The four/ten shifts will originally be established on a volunteer basis. If there are more volunteers than needed, the Employees with the most seniority will be awarded the four/tens provided they have the necessary skills to perform the job. If there are not enough Employees volunteering, the Employees with the least seniority will be required to work the four/tens provided they have the necessary skills to perform the job. On this four/ten shift, Employees will be paid time and one-half (1-1/2) of their straight time hourly rate for all hours in excess of ten (10) hours per day and forty (40) hours in a week.

## **ARTICLE XI - SENIORITY**

### **Section 1 - Seniority**

- a. Site seniority is defined as a Bargaining Unit Employee's continuous service at the site with EG&G and all predecessor contractors.
- b. Bargaining unit seniority is defined as a Bargaining Unit member's continuous service earned under this Labor Agreement or predecessor Labor Agreement as a member in good standing with the United Mine Workers of America (UMWA).
- c. The Company shall supply the Union with a job classification and site seniority list of the Employees covered by this Agreement. Such list(s) shall be revised annually.

## Section 2 - Layoff

The Company will determine the time of layoffs, the number of Employees to be laid off, and in what job classifications layoffs will occur.

- a. If a layoff should occur, the Union shall be notified at least two (2) weeks in advance. Such layoffs shall be made by bargaining unit seniority within the job classification affected. Should bargaining unit seniority within a job classification be equal, then site seniority shall be the determining factor as to who shall be laid off first. Should bargaining unit seniority and site seniority of the affected Employees be equal, then the determining criteria for breaking the tie shall be a flip of the coin with the Employee losing the coin flip being scheduled to be laid off.
- b. An Employee scheduled to be laid off within any classification may use his/her bargaining unit seniority to bump a less-senior bargaining unit Employee who holds a classification for which he/she is qualified. If bargaining unit seniority is equal, then site seniority shall be used as the tiebreaker. Recall to employment from layoff shall be in reverse order of the layoff.
- c. In the case of a layoff, probationary Employees shall be laid off first.
- d. If at the time of layoff, any eligible Employee refuses to exercise their seniority right to bump less senior Employees within the active workforce, such Employee shall continue to retain seniority rights to be recalled. Any Employee scheduled to be laid off must notify the Company of an intention to exercise his/her seniority bumping rights within two (2) working days of the layoff notice. An Employee displaced in the bumping process may similarly exercise his/her seniority rights to displace another Employee in accordance with the same criteria.

## Section 3 - Termination of Seniority

An Employee's seniority shall be terminated and his/her rights under this Agreement forfeited for the following reasons:

- a. Discharge for just cause, quit, retirement, or resignation.
- b. Failure to give notice of intent to return to work after recall within five (5) working days, or failure to return to work on the date specified for recall. An excuse from a medical doctor, leave secured by statute or a covered contractual situation, shall exempt an Employee from this return to work requirement. However, such circumstances must be communicated to the Employer within the five (5) day period outlined above.
- c. Time lapse of eighteen (18) months, or for a period equal to the Employee's seniority (whichever is less) since the last day of actual work for the Company.
- d. Failure to return to work upon expiration of a leave of absence.

## Section 4 - Recall

- a. Order of Recall - If the Company determines to fill job vacancies, such vacancies shall be filled through the job posting and selection process from the active workforce first. All excess vacancies, not filled through this bidding procedure, or left vacant as a result of the bidding process shall be filled from the laid off panel of Employees awaiting recall who have the seniority and the qualifications to return to work and assume the job vacancy that is open. Such Employees, eligible for recall, shall be recalled in reverse order of layoff using seniority and qualifications to perform the duties of the job vacancy as the criteria for recall.

- b. Notice to Recall - The Company will forward a notice of recall by certified mail to the last known address of the Employee reflected on records. The Employee must, within five (5) working days of delivery or attempted delivery of the notice of recall, notify the Company of his/her intent to return to work on the date specified for recall and thereafter, return to work on such date.

### **Section 5 - Job Posting**

When the Company determines to fill a job within the Bargaining Unit, the Company will put a notice of the vacancy or job opening on the Employee bulletin boards for five (5) workdays. Subject to the provisions elsewhere in this Agreement, any Employee may submit a bid for the job to the Human Resources Office in writing, during the posting period. The Company shall not be required to post a notice of vacancy or job opening for a particular job more than once every sixty (60) days. Any bid submitted within a posting period shall remain valid for sixty (60) days.

### **Section 6 - Selection/Hiring**

- a. Selection - From among Employees qualified for a posted job, who submit bids for the job, the Company will award the job to the most senior/qualified Employee. Provided that if two or more bidders have the same bargaining unit seniority, the Company will award the job to the Employee with the greater site seniority. If no Employees qualified for the posted job submit bids for the job, or no one from the recall panel is eligible to fill the vacancy, the Company may fill the job from any source.
- b. New Hires - A probationary period of ninety (90) days will be observed for each new Employee during which time the Company will make specific and periodic evaluations of the Employee's qualifications, skills, and abilities. During this probationary period, an Employee shall be considered as having no seniority rights, provided that upon completion of the probationary period, an Employee shall be entitled to seniority rights as measured from an Employee's employment date. During the probationary period, a new Employee may be discharged in accordance with Company Policy and procedure without recourse to the grievance procedure.

### **Section 7 - Restriction on Bidding**

An Employee who is awarded a job, for which he/she bid, must accept it. If, immediately prior to being awarded a posted job, the Employee's designated job classification was the same as or higher than the posted job, the Employee may not bid for another job for a period of six (6) months after being awarded the job.

### **Section 8 - Disqualification of a Bidder**

An Employee who is unable to perform the job to which he/she bid to the satisfaction of the Company within thirty (30) work days after being awarded the job shall be returned to the job classification he/she held at the time of submitting the bid.

### **Section 9 - Qualifications**

It is agreed that the Company is the sole and exclusive agent to determine the qualifications, skills, and abilities of all Employees.



## ARTICLE XII - HOLIDAYS

### Section 1 - Holidays Celebrated

The following days shall be paid holidays for the purpose of this Agreement:

- |                           |                     |
|---------------------------|---------------------|
| 1. New Year's Day         | 6. Labor Day        |
| 2. Martin Luther King Day | 7. Columbus Day     |
| 3. President's Day        | 8. Veteran's Day    |
| 4. Memorial Day           | 9. Thanksgiving Day |
| 5. Independence Day       | 10. Christmas Day   |

Holidays that fall on Sunday will be observed on the following Monday and holidays that fall on Saturday will be observed on the preceding Friday.

### Section 2 - Eligible Employees

To be eligible for Holiday pay, an Employee must be on the active payroll of the Company, and be in a compensable state with the day before and the day after the Holiday.

### Section 3 - No Work on the Holidays

An Employee who is not required to work on the day observed as a Holiday shall receive eight (8) hours pay at his/her straight-time rate of pay, plus shift differential if applicable.

### Section 4 - Work on the Holiday

An Employee who is required to work on the day observed as a Holiday shall receive time and one-half (1-1/2) times his/her straight time hourly rate for all hours actually worked on that day, in addition to eight (8) hours pay at his/her straight time rate of pay plus shift differential if applicable.

### Section 5 - Holiday During a Personal Leave Period

If a Holiday occurs during the scheduled vacation of an eligible Employee, the Employee will not be charged a personal leave day for the Holiday and the observed Holiday shall be paid as Holiday pay

## ARTICLE XIII - PERSONAL LEAVE

### Section 1 - Personal Leave

<u>Years of Full-Time Service</u>	<u>Accrual Rate</u>	<u>Maximum Carry-Over</u>
Less than two years	12 days	144 hours
Two to five years	15 days	192 hours
Five to ten years	18 days	240 hours
Ten to fifteen years	21 days	288 hours
Fifteen to twenty years	24 days	288 hours
Over twenty years	27 days	288 hours

- a All full-time regular Employees in active payroll status (i.e., not on WC, A&S, or LWOP) for a minimum of fifteen days during the month shall accrue a prorated amount of personal leave based on the schedules above. Employees will accrue personal leave based on years of full-time service. Personal leave may be taken in thirty (30) minute increments

- b. Employees may carry over the maximum personal leave hours according to the above from one calendar year to the next. All personal leave above the maximum carry over will be paid to the Employee in the second payroll of January in the following year. All unused personal leave at the time of termination will be paid to the Employee in the final paycheck following termination.
- c. Employees will begin to accrue leave at the higher rate on the fifteenth of the month after the Employee completes the number of years of service required for the higher rate
- d. Employees desiring to take personal leave must submit the request to his/her manager by 9:00 a.m. the day before leave is desired. Leave will be granted on a first-come, first-serve basis. In some cases where submittals are made at the same time and only one Employee is allowed off due to the need to meet customer requirements, the situation will be determined by seniority. In cases of emergency or illness, same day requests for personal leave must be made to the Employee's manager for approval at least thirty (30) minutes prior to the Employee's scheduled start time. If the employee's manager or his/her designee cannot be reached prior to shift start, the employee can leave a detailed voice mail provided they call again at shift start and discuss the situation with their manager.
- e. An employee requesting leave once a shift has started shall inform their Manager/Designee of the need for emergency leave, make the request to their Manager/Designee as early as practically possible, and obtain their Manager's approval prior to the Employee changing to personal leave status. The Employee requesting emergency leave will inform their Manager/Designee of critical work assignments and requirements to secure the work place before dismissal. The Employee may be required to provide documentation to the Manager upon request. In certain cases, the manager may waive any and all of the above concerning the severity of the emergency. It is understood the Company may take into consideration the possible adverse affects on the health and safety of the person requesting leave, associated workforce, Employee's personal leave balance, and the preservation of the customer's property will be evaluated in the Company's decision to grant personal leave for the emergency.

## **Section 2 - Catastrophic Leave**

Employees will no longer accrue 2 hours of catastrophic leave per month into their leave account. Current catastrophic leave accumulation will be carried forth into this Agreement. Leave balances will be carried over from one year to the next. Leave usage will be in accordance with Company policy

## **ARTICLE XIV - LEAVES OF ABSENCE**

### **Section 1 - Bereavement Pay**

When death occurs in an Employee's immediate family (spouse, mother, father, mother-in-law, father-in-law, son, daughter, brother or sister, step-father, step-mother, step-children, step-brother or step-sister, grandfather, grandmother, and grandchildren), an Employee upon request will be excused for up to three (3) consecutive days to include the day of the funeral. The Employee shall receive pay at his regular rate, provided it is established that he attended the funeral

### **Section 2 - Severance Pay**

An Employee who is terminated shall be paid one week's pay per year of Service up to a maximum of fifteen (15) weeks (minimum of 1 week will be paid)

### **Section 3 - Jury Duty**

An Employee who is called for and who performs jury duty or who is subpoenaed to appear in court as a witness will be compensated by the Company for the difference between payment received for such

compulsory jury duty or compulsory court appearance and the payment the Employee would have received for straight time hours they thereby lose from a normal work schedule computed at the Employee's established hourly base rate as long as the Employee is not party in the legal action. In order to be paid by the Company for such leave, the Employee must submit to the Human Resources written proof of having served, and the duration of such service.

#### Section 4 - Military Service

Regular full-time employees who are members of a military reserve organization and are ordered to temporary training duty are paid the difference for which their straight time pay exceeds their military pay, excluding travel allowances. Payment is made for up to ten days of training in any calendar year. In support of this payment, employees must furnish Human Resources a copy of their orders along with a voucher from their paymaster as soon as practical following their training

#### Section 5 - Business

Employees who have an official request for a leave of absence shall be granted leave to participate in Union activities. Unless otherwise allowed by the employer, no more than two leave requests will be granted for Union activities on any given day.

### ARTICLE XV - HEALTH BENEFITS

Health Plan – The Company will provide the CIGNA medical plans or equivalent. Bi-weekly Employee contributions are listed below. Any and all increases in the monthly premium will be borne 50/50 by the Company and Employee up to a maximum increase of ten percent (10%). Should increases in the monthly premium exceed ten percent, the Company may request that the union meet to negotiate that amount exceeding ten percent.

<u>Coverage</u>	<u>EPO</u>	<u>Med 300</u>	<u>Med 900</u>
Employee Only (14.42-)	20.00	23.00	21.00
Employee Only (14.43+)	27.00	30.00	28.00
Employee Spouse(14.42-)	46.00	58.00	53.00
Employee Spouse(14.43+)	54.00	71.00	66.00
Employee Child(ren)(14.42-)	41.00	52.00	47.00
Employee Child(ren)(14.43+)	49.00	65.00	60.00
Family (14.42-)	47.00	68.00	63.00
Family (14.43+)	60.00	83.00	78.00

Waiver – Employees may opt to waive health insurance coverage and receive a waiver paid on a biweekly basis. Employees must furnish proof of other health coverage to qualify for the waiver. Employees may receive the following waivers: Individual – \$500.00 per year      Dependent - \$500.00 per year

### ARTICLE XVI - DENTAL PLAN

Employees may elect to participate in the Company's optional dental plan. The Employee's bi-weekly contribution rates are listed below. Any and all increases in the monthly premium will be borne 50/50 by the Company and Employee up to a maximum increase of ten percent (10%). Should increases in the monthly premium exceed ten percent, the Company may request that the union meet to negotiate that amount exceeding ten percent.

<u>Coverage</u>	<u>Cigna 50</u>	<u>Cigna 80</u>
Employee Only	1.10	3.30
Employee Spouse	2.75	8.25
Employee Child(ren)	2.75	8.25
Family	2.75	8.25

## **ARTICLE XVII - SCHEDULE OF OTHER BENEFITS**

### **Section 1 – Life Insurance /AD&D**

The Company will provide life insurance as stated in the Summary Plan Description, equal to two (2) times the Employee's annual salary rounded up to the next thousand dollars. The Company will also provide AD&D as currently stated in the Summary Plan Description, equal to two (2) times the Employee's annual salary rounded up to the next thousand dollars.

### **Section 2 – Long-Term Disability**

Employees may elect to participate in the Company's optional Long-Term Disability (LTD) Insurance Program as described in the LTD Summary Plan Description and at the Employees' expense.

### **Section 3 - Retirement**

The Employer will provide a pension plan as described in the Company's Summary Plan Description for the life of the Agreement.

### **Section 4 - 401K Savings Program**

The Employer will continue to provide the Employee's the 401K Savings Plan pursuant to the Summary Plan Description which currently provides a 55 cent match on each dollar contributed by a participating Employee up to six (6) percent of his/her salary.

### **Section 5 – Dependent Life Insurance Plan**

Employees may elect to participate in the Company's optional Dependent Life Insurance Program as described in the Summary Plan Description and at the Employees' expense

### **Section 6 – Accident & Sickness**

The Company will provide A&S insurance as stated in the Summary Plan Description, equal to two thirds (2/3rds) of the employee's weekly base rate up to a maximum of eight hundred (\$800) dollars per week

### **Section 7 – Metpay**

Employees may elect to participate in the optional Metpay program and have their premiums payroll deducted as provided for by the Company.

### **Section 8 – Flexible Spending Accounts**

Employees may elect to participate in the Company's optional flexible spending accounts for the purpose of pre-taxing moneys for health care and child care expenses as provided for by the Company

### **Section 9 – Voluntary Accident**

Employees may elect to purchase optional accidental death and dismemberment insurance through the Voluntary Accident Insurance Plan as provided for by the Company.

### **Section 10 – Employee Assistance Program (EAP)**

Employees may participate in the optional services described in the Employee Assistance Program as provided

by the Company.

#### **Section 11 – Vision Plan**

Employees may elect to participate in the Company's optional Vision Plan at the Employee's expense as provided for by the Company.

### **ARTICLE XVIII – PERIODIC CONFERENCES**

The parties recognize for their joint benefit, the prosperity and efficiency of the Company are dependent upon their ability to work cooperatively. In order to achieve this, the parties agree to meet periodically, but not less than two (2) times per year, to discuss items of mutual interest. The Company shall designate three (3) representatives and the Union shall designate three (3) representatives to participate in the conference. Union representatives that are the employees of the Company shall be compensated at their applicable straight time rate for their time spent in conference.

### **ARTICLE XIX - BULLETIN BOARDS**

The Employer will provide a bulletin board for the use of the Local Union on the property that is in conformity with government regulations and which provide reasonable access by the Union membership to information that the Union wishes to communicate.

### **ARTICLE XX - SAFETY**

#### **Section 1.**

The Company will comply with all applicable health and safety laws and regulations, and the Company and all Employees agree to cooperate toward the objective of eliminating accidents and health hazards. The Company will continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. The Union agrees that the Company may terminate any employee covered by this Agreement who intentionally exposes him/herself or any individual to unsafe acts, which could result in serious bodily harm. All employees must immediately report any work-related injury, as per site policy. An employee may not be discriminated against for following this procedure.

#### **Section 2.**

The Company and the Union agree to establish a quarterly meeting to cooperate in the elimination of unsafe and hazardous conditions and the improvement of the safety record. The committee will consist of three (3) representatives from management and three (3) representatives from the Union.

#### **Section 3.**

All employees will follow the Company's Safety Operating Policies and Procedures as well as NETL's Environmental Safety and Health Program. Copies of these policies and programs will be available to all employees on the Local Area Network (LAN) and in the Company's Office of Environmental Safety and Health (ES&H). Any new safety policies and/or procedures established by the Company shall be posted on the bulletin boards.

#### **Section 4.**

District and/or International Representatives requesting access to the site to discuss safety matters/incidents with management personnel shall be granted access subject to the routine check in/out procedures.

**Section 5.**

In cases involving major accidents or fatalities of Bargaining Unit Employees, the Union steward will be allowed to participate in the Company's investigation of the incident.

**Section 6.**

One person from the clerical unit will act as safety representative and address safety issues with the Company that may arise on site.

**ARTICLE XXI - NEW EQUIPMENT**

In the event that new equipment or devices are introduced and are to be operated or maintained by Bargaining Unit personnel, the Company agrees to provide training on such equipment on an as needed basis. The employees and the manner in which they are trained, will be determined by the Company.

**ARTICLE XXII - SUCCESSORSHIP**

The provisions of this Agreement shall be binding upon and to the mutual benefit of the Parties thereto, and to their successors and assigns, except as may otherwise be provided by applicable law or federal regulations.

**ARTICLE XXIII - NO STRIKE - NO LOCKOUT**

The Company agrees there will be no lockout of the Union or of Employees represented by the Union during the term of this Agreement.

The Union, collectively, and the Employees covered by this Agreement, agree they will not call, engage in, or sanction any strike during the term of this Agreement.

**ARTICLE XXIV - TEMPORARY/PART-TIME EMPLOYEES**

No one may be retained in a temporary or part-time capacity while any full-time Employee is on lay off. Temporary/part-time Employees may never exceed fifteen percent (15%) of the full time classified workforce even when there is no reduction in force/lay off. Temporary Employees with an anticipated employment of less than six (6) months will receive \$2.56 per hour in lieu of benefits. Part-time Employees will receive \$2.56 per hour in lieu of benefits. Part-time Employees employed on the effective date of this Agreement shall be exempt from this article.

**ARTICLE XXV - CONTINUANCE OF EMPLOYER PROVIDED APPAREL AND TOOLS**

The Employer agrees to continue the practice of providing employees with certain wearing apparel, tools, and safety devices including, but not limited to, steel-toed boots and shoes, uniforms, safety glasses, and other items previously provided to the Employee for his or her use in carrying out their duties. In the event that the government, for whatever reason, decides to discontinue certain programs that provide any of these items, the Union will immediately negotiate with the employer with respect to the impact that such changes have had on it's membership.

**ARTICLE XXVI - TERM OF AGREEMENT**

This Agreement shall take effect February 1, 2001, and shall remain in effect through January 31, 2004, and shall continue in effect from year to year thereafter, unless changed or terminated. Either party desiring to change or terminate this Agreement must notify the other in writing at least sixty (60) days prior to February 1, 2004.

IN WITNESS WHEREOF, each of the parties signatory hereto has caused this Agreement to be signed this \_\_\_\_ day of February 2001.

  
For the Union      Date 2-28-01

  
For the Employer      Date 3-2-01

**APPENDIX A**

Classification	02/01/01	02/01/02	02/01/03
Word Processor I	\$10.61	10.91	11.16
Word Processor II	\$11.91	12.21	12.46
Word Processor III	\$13.32	13.60	13.85
Secretary I	\$12.25	12.50	12.75
Secretary II	\$13.41	13.71	13.96
Secretary III	\$14.63	14.93	15.18
General Clerk I	\$7.53	7.83	8.08
General Clerk II	\$8.47	8.77	9.02
Senior Clerk	\$11.10	11.40	11.70

The Company will agree to the following reclassifications:

- S. Batton to Secretary I
- C. DeBerry to Secretary I
- D. Sugg to Word Processor III
- T. Kapaldo to Word Processor III
- L. Wilson to Word Processor III

Employees not receiving an hourly rate increase shall receive a lump sum wage increase in the amount of 2.5% (Hall yr1&2, Pratt yr1).



REGISTER OF WAGE DETERMINATIONS UNDER  
THE SERVICE CONTRACT ACT  
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WAGE AND HOUR DIVISION  
WASHINGTON, D.C. 20210

William W. Gross            Division of Wage  
Director                      Determinations

Wage Determination No.: 1999-0619  
Revision No.: 2  
Date of Last Revision: 10/01/2003

State: Pennsylvania

Area: Pennsylvania County of Allegheny

Employed on contract for U.S. Department of Energy regarding site operations and program support operations.

Collective Bargaining Agreement between EG&G Services and The International Union of Operating Engineers effective July 1, 2003 through June 30, 2007.

In accordance with Sections 2(a) and 4(c) of the Service Contract Act, as amended, employees employed by the contractor(s) in performing services covered by the Collective Bargaining Agreement(s) are to be paid wage rates and fringe benefits set forth in the current collective bargaining agreement and modified extension agreement(s).

#10#13

**AGREEMENT BETWEEN**



**PARTY TO GOVERNMENT CONTRACT**

**DE – AM26-99FT40464**

**NATIONAL ENERGY TECHNOLOGY LABORATORY - PITTSBURGH**

**AND**

**THE INTERNATIONAL UNION OF OPERATING ENGINEERS**

**LOCAL 95, AFL-CIO**

**EFFECTIVE JULY 1, 2003**

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## **PREAMBLE**

THIS AGREEMENT is made effective July 1, 2003 by and between EG&G Technical Services, a Party to Government Contract #DE-AM2699FT40464 located at the National Energy Technology Laboratory - Pittsburgh, ("NETL"), Bruceston, Pennsylvania, (hereinafter referred to as either the "Company" or "EG&G") and Local Union 95 of the International Union of Operating Engineers, located at 300 Saline Street, Pittsburgh, Pennsylvania, 5207, (hereinafter referred to as the "Union").

**WITNESSETH:** WHEREAS, the Company and the Union have bargained collectively, in good faith, with respect to wages, hours and other conditions of employment for employees in a Bargaining Unit hereinafter more clearly defined, and have reached agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Company and the Union do hereby agree as follows:

## **ARTICLE I - PURPOSE**

It is the intent and purpose of the Company and the Union to establish, through this Agreement, the wages, hours of work, and conditions of employment about which the Company and the Union bargained for the employees of the Company in the unit defined herein; to provide a procedure for processing disputes between the Company and the Union as to the interpretation and application of the provisions of this Agreement; and generally to govern the relationship between the Company and the Union and its members.

**SECTION 1.1** - The Union recognizes the necessity to achieve efficiency in production and acknowledges that it is the further purpose of this Agreement to prevent interruptions of work and interference with the efficient operation of the Company's business.

**SECTION 1.2** - Except as specified in this Agreement, the Union and the employees it represents are not waving rights which exist under the National Labor Relations Act to bargain over employees' wages, hours and working conditions. Nor do the Union and the employees it represents waive any right to challenge any governmental action, which would dictate a change in a term and condition of employment provided for under this Agreement.

**SECTION 1.3** - The Company and the Union mutually agree not to discriminate in any way against any employee with respect to hiring, compensation and terms or conditions of employment because of religion, race, creed, sex, national origin, age, union membership and to comply with all applicable laws relating to the handicapped and Vietnam-era Veterans

## **ARTICLE 2 - RECOGNITION**

The Company hereby recognizes the Union as the exclusive bargaining representative for the purpose of bargaining collectively as required by Section 8D of the NLRA with respect to wages, hours and other conditions of employment, for the Company's employees regularly assigned to the following bargaining unit, all full time and regular part-time stationary engineers and maintenance employees, including HVAC mechanics, operator mechanics, electricians, electronic technicians, pipefitter/plumbers, welders, machinery mechanics and truck drivers, lead operator mechanics, unit clerk and unit secretary employed by EG&G in the operation, maintenance, repair and renovation of all equipment under the direct supervision of EG&G at NETL, Bruceton, Pennsylvania. All other employees are excluded.

Except as otherwise provided in this Agreement, the Company's personnel outside the collective bargaining unit can perform bargaining unit work only in emergency situations when no bargaining unit members are available in sufficient numbers or would not be reasonably expected to arrive in sufficient time to abate the emergency.

## **ARTICLE 3 - UNION REPRESENTATION**

**SECTION 3.1 - UNION BUSINESS REPRESENTATIVE** The Business Representative of the Union shall have access to the shops and office of EG&G at NETL for the purposes of adjusting disputes, investigating working conditions, and ascertaining that the Agreement is being adhered to providing there is no interruption of the Company's business and providing further that;

- a) the Business Representative notifies the Program Manager in advance of any visit and,
- b) prior to entering any facilities under the control of the Company, the visiting Union Representative reports to the Program Manager's office.

**SECTION 3.2 - SHOP STEWARDS** The Company recognizes the right of the Union to designate one (1) Steward and one (1) alternate

- a) The authority of the Steward so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:
  - 1) The investigation and presentation of grievances in accordance with the provisions of this collective bargaining Agreement.
  - 2) The transmission of such messages and information as shall originate with, and are authorized by the Union or its officers.

**SECTION 3.3 - SCOPE OF STEWARDS' UNION ACTIVITIES** The Stewards' Union activities on Company time shall fall within the scope of the following functions:

- a) To investigate a complaint or grievance and to present a complaint or grievance to an employee's immediate manager in an attempt to settle the matter for the employee or group of employees who may be similarly affected.
- b) The Union Steward and/or the assistant Union Steward shall be permitted reasonable time off during their scheduled shift without loss of compensation to investigate and/or attend Grievance/Arbitration and Negotiation meetings between the Company and Local 95.
- c) The Company and the Union are in agreement that a minimum amount of time should be spent in the performance of these duties.
- d) The Steward shall be allowed to perform these duties during the Steward's working hours without loss of compensation. The performance of these duties shall be limited to a reasonable amount of time per shift.
- e) Notwithstanding the duties specified above, the Steward shall have the same responsibilities to the Company as any other Employee. The duties specified above shall not relieve the Steward of his/her duties, and obligations as an employee of the Company, and he/she shall continue to be subject to all rules, regulations and procedures applicable to other employees.

**SECTION 3.4**

- a) The Steward shall have super seniority in his/her respective occupational classification for purposes of lay-off and recall only, if there is work and the Steward is qualified to perform the work. This provision shall not be construed as a guarantee of employment. An alternate Steward does not have super seniority. An alternate Steward will only be recognized as Steward when acting in behalf of a Steward who is absent from work. The alternate Steward will be permitted to follow up a grievance that was initiated during the absence of the Steward, but will be subject to the same obligations and limitations as the Steward.
- b) The Steward shall be on the job at all times during working hours as far as is practical. The Steward shall not hinder or delay the performance of his/her work or other employee's work.
- c) The Steward must first obtain permission from his/her immediate supervisor before leaving his/her workstation to investigate a grievance during working hours. Upon

completion of such investigation, he/she shall immediately report back to his/her supervisor before returning to work. Permission will not be unreasonably withheld.

- d) The Steward shall not solicit grievances.
- e) The Company will not afford the Steward preferential treatment, except as otherwise provided in this Agreement.

**SECTION 3.5 - UNION SHOP** All employees of the Company covered by this Agreement, who pay dues to the Union and are in good standing on the effective or execution date of this Agreement, whichever is later, shall continue to pay dues to the Union and shall remain in good standing. Those who are not paying dues to the Union on the effective or execution date of this Agreement, shall commence paying dues and remain in good standing in the Union as of the effective date of this Agreement. All employees covered by this Agreement and hired on or after its effective or execution date, whichever is later, shall, on the ninetieth (90th) day following the beginning of such employment, commence paying dues to the Union and remain in good standing in the Union. Probationary Employees and Temporary Employees are required to pay a permit fee each month as designated by the Union.

**SECTION 3.6 - CHECK-OFF** Upon receipt of an employee's written authorization, attached as Exhibit "A" which shall be irrevocable for the life of the Agreement, the Company shall on one (1) pay day of each month deduct from such employee's wages, monthly Union dues, permit fees and application fees and remit those funds to the business office of the Union monthly.

**SECTION 3.7 - HOLD HARMLESS** The Union agrees to indemnify the Company and hold it harmless against any liability incurred as a result of the Company's complying with Section 3.6 of this Agreement.

**SECTION 3.8 -** The Union shall notify the Company of the amount of dues to be withheld by the Company, and shall advise the Company in writing at least three (3) months prior to any change in the amount to be withheld.

#### **ARTICLE 4 - GENERAL WAGE PROVISIONS**

**SECTION 4.1 - WAGE RATES:** The hourly rates for Employees covered by this Agreement shall be as set forth in Exhibit "B".

**SECTION 4.2 - SHIFT DIFFERENTIALS** Effective October 1, 2003, the Company shall pay a shift differential of \$1.25 per hour for all hours worked on a regularly scheduled shift commencing after 3:00 P.M.

**SECTION 4.3 - OUT OF CLASSIFICATION WORK** When a qualified employee is assigned to and works independently for a period of one (1) hour or more in a higher (but not lower) classification, the employee will receive the rate of the higher classification for the period during which the employee works in the higher classification.

**SECTION 4.4 - TEMPORARY ASSIGNMENT** If a temporary vacancy is anticipated to exist for more than thirty (30) calendar days, the Company may select an employee to fill that vacancy for no more than one hundred eighty (180) calendar days. Employees shall indicate his/her interest in such temporary vacancies and, if qualified, be selected to fill it based on seniority.

**SECTION 4.5 - SCHEDULE CHANGES** An employee's schedule shall not be changed for the explicit purpose of avoiding overtime.

**SECTION 4.6 - WAGE RATES FOR REVISED OCCUPATIONAL CLASSIFICATIONS** In the event the Company desires to revise occupational classifications, the wage rates applicable shall be determined by negotiation between the Company and the Union. Operations shall not be delayed through failure to immediately agree upon wages rates applicable to any such occupational classification. In such cases, pending the results of negotiations, the Company will establish the revised occupational classification and the Company proposed wage rate applicable thereto and shall place such occupational classification and such wage rate into effect. Negotiated rates finally established which are higher than the Company's proposed rates will be paid retroactive to the date of the revised occupational classification.

**SECTION 4.7 - TUITION REFUND** Tuition refund will be provided in accordance with corporate policy; said policy may be modified.

**SECTION 4.8 - REIMBURSEMENT FOR TRAINING** The Company agrees to provide reimbursement of tuition for employees attending and successfully completing courses offered by the Union (Local 95) training program or other providers as long as a prior written request is submitted for approval by the Company. Such courses will include RCRA, DOT, OSHA (Hazwoper), and OSHA (Hazmat).

## **ARTICLE 5 - GRIEVANCE PROCEDURE**

**SECTION 5.1 - DEFINITION** The word grievance as used in this Agreement means a complaint filed by an employee and/or the Union against the Company alleging failure of the Company to comply with any express provision of this Agreement not excluded from this Grievance Procedure.

**SECTION 5.2 - INITIATION OF GRIEVANCE** A grievance, to be recognized, must be brought to the Company's attention within five (5) working days of its occurrence. The Company has no



obligation to accept a grievance unless it is submitted and appealed within the time limits set forth in this Article 5 of the Agreement.

**SECTION 5.3 - GOOD FAITH EFFORTS** If a grievance should arise between any employee or group of employees or the Union and the Company, a good faith effort shall be made to promptly settle such grievance.

**SECTION 5.4 - FAILURE TO RESPOND** If the Company fails to answer within the time limits set forth in this Article 5 of the Agreement, the grievance shall automatically proceed to the next step.

**SECTION 5.5 - PROCEDURE** Grievance shall be handled in the following sequence and manner:

1) As Step 1, the Employee or Employees shall take the matter up with the designated Manager within five (5) working days of knowledge of infraction and the grievant may request that their Union Steward be present. The manager shall have five (5) working days to respond to the issue. If the matter is not satisfactorily adjusted within said five (5) day period, the grievance may be processed at Step 2.

2) As Step 2, the grievance shall, within five (5) working days thereafter, be reduced to writing, on standard grievance form attached as Exhibit "C", specifying, where possible, the Article and Paragraph of the Agreement claimed to have been violated. The employee or employees involved shall take the matter up with the Human Resources Manager. If the matter is not satisfactorily adjusted within three (3) work days after having taken the matter up with the Human Resources Manager at Step 2, the grievance may be processed at Step 3.

3) As Step 3, the grievance shall be taken up on with the Program Manager and/or his/her representative and the Union's Business Representative. If the matter is not satisfactorily adjusted within five (5) working days, it shall be subjected to arbitration in accordance with provisions hereinafter set forth.

**SECTION 5.6 - DISCIPLINE AND DISCHARGE** The Company reserves the right to discipline, or discharge employees in accordance with Company Policy and procedures. Should the Union dispute the Company's action as not being for just cause, then such dispute may be processed as a grievance starting at Step 3 of the Grievance Procedure, provided the grievance is reduced to writing within five (5) days of the effective date of the disciplinary action in question.

In cases of discharge, the Company shall notify the Union of the discharge and its reason for such action in writing within one (1) working day, or as soon thereafter as practicable, by Certified Mail. An employee who claims he/she has been discharged without just cause must notify the Union within two (2) working days following the discharge. Notice that a discharge is being grieved must be made to the Company in writing by the Union within five (5) working days from the date of

discharge. Discussions between the Company and the Union Business Representative concerning the discharge shall be considered Step 3 and subject to the provisions relating to Step 3 of the Grievance Procedure.

**SECTION 5.7 - TIME LIMITS** The time limits specified in this Article shall be of the essence, and failure by the Union to take actions as required within the time specified herein shall result in the Grievance being dropped and not being subject to arbitration. The time limits may be waived only by written mutual agreement. Working days used throughout this grievance procedure shall be exclusive of Saturday, Sunday or Holidays. It is understood that this definition of working days is unique to the grievance procedure.

## **ARTICLE 6 - ARBITRATION**

**SECTION 6.1 - ARBITRATION** If within five (5) working days from and after the day that the Company's answer to Step 3 was given to the Union, the grievance is not satisfactorily resolved, the Company or the Union shall have the right to appeal the Grievance to arbitration. The arbitrator shall be selected from a panel of seven (7) submitted to the parties from the Federal Mediation and Conciliation Service. Both parties agree that a request for arbitration must be submitted to the non grieving party within five (5) working days from the receipt of the Company's answer to Step 3 or the right to arbitrate that grievance is forfeited.

**SECTION 6.2 - COST OF ARBITRATION** The expense and fees of the Arbitrator shall be borne equally by the Company and the Union. Each party shall pay any and all expenses for their own representatives and witnesses.

**SECTION 6.3 - ARBITRATOR'S AUTHORITY** The Arbitrator shall have the authority to determine the procedural rules of arbitration and shall have the authority to make such binding awards as are necessary to enable him/her to act effectively subject to the following:

The decision of the Arbitrator shall be binding upon the Company, the Union, and the aggrieved employee or employees. The Arbitrator shall have no power to add or subtract from or modify any of the terms of this Agreement or any Agreements made supplementary hereto, or to substitute his/her discretion in cases where the Company is given discretion by this Agreement or by any Supplementary Agreements. It is agreed that any differences arising as the result of the negotiation of the terms of a new Agreement or the modification of the Agreement are not subject to this Article, the sole purpose of which is to make grievances arising out of and during the term of the Agreement subject to arbitration.

## **ARTICLE 7 - HOURS AND OVERTIME**

**SECTION 7.1 - NOTICE OF SHIFT CHANGE** Except in cases of emergency or when directed by the client, the Company will give at least seven (7) days notice of any shift change.

**SECTION 7.2 - ASSIGNMENT OF OVERTIME** The Company retains the right to assign the least senior qualified person in a classification that requires shift work or overtime for which no senior person in that classification has volunteered.

**SECTION 7.3 - DISTRIBUTION OF OVERTIME** Overtime shall be distributed equitably among all employees of a classification on a rotating descending seniority basis, except that employees performing the work during their regular eight (8) hour shift shall be offered first.

- a) Refusal to work overtime shall be counted as time worked for the sole purpose of equitable distribution.
- b) Special projects out of classification shall be rotated among qualified employees by Bargaining Unit seniority.
- c) Should the Company and the Union determine that an employee was improperly denied overtime opportunities, the Company shall provide the employee with future available scheduled overtime, provided the employee is qualified for the job to be done and it does not disrupt the efficient operation of the department.
- d) A written record of overtime worked by employees in each Department will be maintained by the employee's Manager. The overtime record will indicate the employee's name and the date. Employees will be credited with overtime worked by recording the actual number of overtime hours worked. Employees unable to work overtime, when requested, shall be deemed to have worked the overtime hours actually worked on the task for distribution of overtime purposes.

**SECTION 7.4 - WORKWEEK** The workweek shall consist of seven (7) days beginning immediately after midnight on Friday and ending at 12:00 midnight the following Friday.

**SECTION 7.5 - REGULAR WORKWEEK** The regular workweek shall consist of five (5) consecutive shifts within one (1) standard payroll week normally Monday through Friday.

**SECTION 7.6 - WORKDAY** A workday is a period of twenty-four (24) consecutive hours beginning immediately after midnight of one day and ending at midnight on the following day.

**SECTION 7.7 - REGULAR SHIFT** A "regular shift" shall be scheduled in advance, and shall consist of a specific number of consecutive hours during a "regular work day" exclusive of a one-half hour (1/2) unpaid meal period.

## **SECTION 7.8 - OVERTIME WORK**

a) The Company shall determine when and by whom overtime will be worked. Overtime will be allocated as equally as possible among employees. Overtime worked shall be compensated at the rate of time and one-half (1-1/2) for all hours worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek. Employees may request an altered workday/workweek for their convenience. Altered schedules are subject to the approval of management.

b) Holidays and vacation shall be included as time worked for the purpose of calculating overtime. Personal or sick leave shall be excluded as time for purposes of calculating overtime.

**SECTION 7.9 4/10 HOUR WORKWEEK** – In response to customer requirement, the Truck Driver will be assigned to a 4/10 hour workweek. When a holiday occurs on a workday, the Truck Driver will receive 10 hours of holiday pay.

**SECTION 7.10 - PYRAMIDING** There will be no "pyramiding" of overtime allowed.

**SECTION 7.11 - CALL OUT PAY** Any employee called back to work after having completed his/her regular shift and gone home shall receive a minimum of four (4) hours pay at one and one-half (1-1/2) times the prescribed hourly rate. An employee shall not be deemed to have been called back under the provisions of this Section unless requested to work after having punched out and physically departed the Employer's premises. An employee called out may be required to work the four (4) hours if requested by his/her supervisor. An employee whose call-in time extends into their regular shifts shall receive the appropriate premium rate for those hours which extend into the regular shift.

## **ARTICLE 8 - HEALTH INSURANCE & WELFARE**

**SECTION 8.1 - BENEFITS PROVIDED** The employer agrees to make contributions as listed below, for all employees and their eligible dependents, covered herein, to the Pittsburgh Building Owners Welfare Fund. This plan provides for the life, accidental death, sickness and accident insurance. The plan further provides for family dental, eye care, prescription drug program and health insurance. The specifics of this insurance are contained in Local 95's summary plan descriptions. Copies of which have been given to the employer and employees.

**SECTION 8.2 – ELIGIBILITY** Regular full-time Employees shall become eligible for the Pittsburgh Building Owners Welfare fund on the first (1st) day of the month following employment with the Company.

**SECTION 8.3 - BENEFITS OPTIONS**

Effective July 1, 2003, the Employee contribution amount will not be increased with the increased health premiums. Effective September 1, 2003, and for the life of the agreement, the employer will pay 85% of the Health premiums with the employee paying 15% of the elected premium. The employee contribution will be increased to the then current health premiums effective August 1, 2004, and again thereafter effective July 1 of each succeeding year. The Company will forward contributions to the Health and Welfare Funds for Individual, Two Party, and Family coverage.

Class N – consisting of	Contract #
Health America HMO	2180980001
UC Flex	142054-002
OPTI Choice Vision	80754-00
Life Insurance	\$50,000
Accidental Death	\$50,000
Sickness & Accident	\$500/wk for 26 weeks
Class M – consisting of	Contract #
UPMC HMO	0003670095
United Concordia	25328000
OPTI Choice Vision	80754-00
Life Insurance	\$50,000
Accidental Death	\$50,000
Sickness & Accident	\$500/wk for 26 weeks
Class E – consisting of	
UPMC HMO	0003670095
UC Flex	142054-002
OPTI Choice Vision	80754-00
Life Insurance	\$50,000
Accidental Death	\$50,000
Sickness & Accident	\$500/wk for 26 weeks
Class R – consisting of	
Health America HMO	2180980001
United Concordia	25328000
OPTI Choice Vision	80754-00
Life Insurance	\$50,000
Accidental Death	\$50,000
Sickness & Accident	\$500/wk for 26 weeks

**SECTION 8.4 - WAIVER OF PARTICPATION** Bargaining unit employees who elect to waive participation in the health insurance plan will be eligible for Company provided Class O - Life Insurance (\$50,000), Accidental Death and Dismemberment (\$50,000) and Accident and Sickness (\$500/wk for 26 wks) benefits only. Employees may opt to waive health insurance coverage and receive a waiver paid on a bi-weekly basis. Employees must furnish proof of other health coverage to qualify for the waiver. Individual - \$500.00 2-Party and Family - \$1000.00

**SECTION 8.5 - EMPLOYEE CO-PAY AMOUNT** In addition to medical as stated in 8.3 above, bargaining unit employees shall pay fifteen (15%) percent of the cost of Dental, Vision, Life/AD&D, A&S and operating fee premiums monthly.

## **ARTICLE 9 - SENIORITY**

### **SECTION 9.1 - SENIORITY**

- a) Site seniority is defined as a Bargaining Unit employee's continuous service at the site with a predecessor contractor or EG&G.
- b) Bargaining unit seniority is defined as a bargaining unit member's continuous service earned under this Labor Agreement or a prior Labor Agreement as a member in good standing with the International Union of Operating Engineers.
- c) The Company shall supply the Union with a job classification and site seniority list of the employees covered by this Agreement. Such list(s) shall be revised annually.

**SECTION 9.2 - LAYOFF** The Company will determine the time of layoffs, the number of employees to be laid off, and in what job classifications layoffs will occur.

- a) If a layoff should occur, the Union shall be notified at least two (2) weeks in advance. Such layoffs shall be made by job classification seniority within the job classification affected.
- b) The employee with the least job classification seniority shall be the first to be laid off and recall shall be in reverse order. An employee subject to layoff out of a job classification may use their bargaining unit seniority to bump a less-senior bargaining unit employee who holds a classification for which they are qualified. If bargaining unit seniority is equal, then site seniority shall be used as the tie-breaker.
  - 1) The employee may exercise his/her bumping rights within any job classification in which an employee had previously established classification seniority and is still qualified.

- 2) An employee who is laid off may elect to displace an employee with less site seniority in a different job classification if he/she is qualified to do so.
- 3) In the case of a layoff, probationary employees shall be laid off first and apprentices second.
- 4) If at the time of layoff, any eligible employee declines to exercise their seniority right, such employee shall retain seniority rights to be recalled. Such employee must notify the Company of an intention to exercise seniority rights within two (2) working days of the layoff notice. An employee so displaced may similarly exercise seniority rights to displace another employee in accordance with the same criteria.

**SECTION 9.3 - SEVERANCE PAY** A regular full-time employee with at least one year of continuous service whose employment is terminated due to a reduction in force shall be paid four (4) week's of severance pay.

**SECTION 9.4 - TERMINATION OF SENIORITY** An employee's seniority shall be terminated and his/her rights under this Agreement forfeited for the following reasons:

- a) Discharge for just cause, retirement, or resignation;
- b) Failure to give notice of intent to return to work after recall within five (5) working days, or failure to return to work on the date specified for recall, as set forth in the written notice of recall;
- d) Time lapse of twenty-four (24) months, or for a period equal to the employee's seniority (whichever is less) since the last day of actual work for the Company; provided the employee substantiates his/her availability every three (3) months;
- e) Failure to return to work upon expiration of a leave of absence;
- f) Absence in excess of two (2) years due to physical disability; provided, however, that where such absence is due to compensable disability incurred during the course of such employment, such absence shall not break continuous service, provided that such individual has returned to work within a seven (7) calendar day period after final payment of statutory compensation for such disability or after the end of the period used in calculating a lump sum payment. Upon return to work from a period of Disability, the employee must present appropriate documentation verifying his/her availability date and medical release.

## **SECTION 9.5 - RECALL**

a) **Order of Recall** If the Company determines to fill job vacancies in a job classification from which employees are laid off, such employees who are eligible for recall, shall be recalled in reverse order of layoff.

b) **Notice to Recall.** The Company will forward a notice of recall by certified mail to the last known address of the employee reflected on Company records. The employee must, within five (5) working days of delivery or attempted delivery of the notice of recall, notice the Company of his/her intent to return to work on the date specified for recall and thereafter, return to work on such date.

**SECTION 9.6 - JOB POSTING** When the Company determines to fill a job within the Bargaining Unit, the Company will put a notice of the vacancy or job opening on the employee bulletin boards for five (5) workdays. Subject to the provisions elsewhere in this Agreement any employee may submit a bid for the job to the Human Resources Department in writing, during the posting period by placing the bid in the receptacle provided. The Company shall not be required to post a notice of vacancy or job opening for a particular job more than once every sixty (60) days. Any bid submitted within a posting period shall remain valid for sixty (60) days.

**SECTION 9.7 - SELECTION** From among employees who submit bids for the job, the Company will award the job to the most qualified employee; provided that if two (2) or more bidders are equally qualified, the Company will award the job to the employee with the greater site seniority. Once internal sources are utilized, the Company will utilize the Union Hall as one source for qualified candidates. Should the Company determine that candidates referred by the Union are not qualified, they may fill the job from any source.

**SECTION 9.8 - RESTRICTION ON BIDDING** An employee who is awarded a job for which he/she bid, must accept it. If, immediately prior to being awarded a posted job, the employee's designated job classification was the same as or higher than the posted job, the employee may not bid for another job for a period of eighteen (18) months after being awarded the job.

**SECTION 9.9 - DISQUALIFICATION OF A BIDDER** An employee who is unable to perform the job to which he/she bid to the satisfaction of the Company within thirty (30) workdays after being awarded the job shall be returned to the job classification he/she held at the time of submitting the bid.

**SECTION 9.10 - PROBATIONARY PERIOD** A probationary period of ninety (90) days will be observed for each new employee during which time the Company will make specific and periodic evaluations of the employee's qualifications, skills and abilities. During this probationary period, an employee shall be considered as having no seniority rights, provided that upon completion of the probationary period, an employee shall be entitled to seniority rights as



measured from an employee's employment date. During the probationary period an employee may be discharged in accordance with Company Policy and procedure without recourse to the grievance procedure.

**SECTION 9.11 – QUALIFICATIONS** It is agreed that the Company is the sole and exclusive agent to determine the qualifications, skills and abilities of all employees.

**SECTION 9.12 – SENIORITY** If application of the preceding Section results in two (2) or more employees having the same seniority, the employee whose last four (4) digits in his/her social security number is the largest shall be deemed more senior. (E.G. 4321 is larger than 1234). Seniority shall not accrue to a probationary employee until completion of the probationary period at which time the employee shall possess seniority. Seniority shall be applicable only as expressly provided in this Agreement.

## **ARTICLE 10 - HOLIDAYS**

**SECTION 10.1 - HOLIDAYS CELEBRATED** The following days shall be paid holidays for the purpose of this Agreement:

- |                           |                 |
|---------------------------|-----------------|
| 1. New Year's Day         | 6. Labor Day    |
| 2. President's Day        | 7. Columbus     |
| 3. Martin Luther King Day | 8. Veterans     |
| 4. Memorial Day           | 9. Thanksgiving |
| 5. Independence Day       | 10. Christmas   |

**SECTION 10.2 - ELIGIBLE EMPLOYEES** To be eligible for Holiday pay, an employee must have completed his/her probationary period, be on the active payroll of the Company, be a regular, full-time employee and be in a compensable state with EG&G the day before and the day after the Holiday. Employees on workers' compensation, accident and sickness, or LWOP are not considered to be in a compensable state.

**SECTION 10.3 - NO WORK ON THE HOLIDAYS** An eligible employee who is not required to work on the day observed as a Holiday shall receive eight (8) hours pay at his/her straight-time rate of pay, plus shift differential, if applicable.

**SECTION 10.4 - WORK ON THE HOLIDAY** An eligible employee who is required to work on the day observed as a Holiday shall receive one and a half (1-1/2) times his/her straight time hourly rate for all hours actually worked on that day, in addition to eight (8) hours pay at his/her straight time rate of pay. An employee who is required to work on the day observed as a Holiday and who does not report for work shall not be paid for the Holiday under this Article unless the Company ascertains there is a valid reason for his/her absence.

**SECTION 10.5 - HOLIDAY DURING A VACATION PERIOD** If a Holiday occurs during the scheduled vacation of an eligible employee, the employee will not be charged a vacation day for the Holiday and the observed Holiday shall be paid as Holiday pay.

**SECTION 10.6 - EMERGENCY SHUTDOWN** When, due to emergency reasons the Government shuts down the operation, employees who are specifically required to continue to work or who are called in to work will be compensated at one and one-half (1-1/2) their normal straight time rate for all hours worked.

### **ARTICLE 11 - VACATION**

**SECTION 11.1 - VACATION ACCRUAL** All full-time regular Employees in active payroll status (i.e. not on LWOP) during the month shall accrue vacation leave based on the schedules in Section 11.4 Employees will accrue vacation leave based on years of full-time service. Employees on A&S or Workers Compensation will accrue vacation leave for up to twenty-six (26) weeks of their disability.

**SECTION 11.2 - VACATION CARRYOVER** Employees may carry over a maximum number of hours of vacation leave from one calendar year to the next. All vacation leave above the maximum carry over will be paid to the Employee in the second payroll of January in the following year. All unused vacation leave at the time of termination will be paid to the Employee in the final paycheck following termination.

**SECTION 11.3 - ACCRUAL INCREASE** Employees will begin to accrue leave at the higher rate on the fifteenth of the month after the Employee completes the number of years of service required for the higher rate.

**SECTION 11.4 - ACCRUAL RATES** The amount of vacation to which an employee is entitled during any year shall be determined by the number of years of continuous service completed by the employee at the site with a predecessor contractor (i.e. a contractor which performed essentially the same service as EG&G under a preceding contract) or with EG&G in accordance with the following chart:

<u>Years of Continuous Service</u>	<u>Days/year</u>	<u>Hours/Month</u>	<u>Carryover</u>
Less than 4	10 days	6.66 hrs	144 hrs
4 to 13	15 days	10 hrs	192 hrs
14 to 23	20 days	13.33 hrs	240 hrs
24 or more	25 days	16.66 hrs	288 hrs

All absences, unless approved beyond the allotted vacation hours, shall be leave without pay and considered excessive absence as addressed in Company procedures.

**SECTION 11.5 - REQUEST FOR LEAVE** Employees desiring to take vacation leave must submit the request to his/her manager by the end of the shift the day before leave is desired. Leave will be granted on a first come, first served basis. In some cases where submittals are made at the same time and only one Employee is allowed off due to the need to meet customer requirements, the request approval will be determined by seniority. In cases of emergency or illness, same day requests for vacation leave must be made to the Employee's manager for approval prior to the Employee's scheduled start time.

**Section 11.6 - VACATION PAYOUT** Any unused earned vacation will be paid upon termination of employment regardless of the reason for termination.

**SECTION 11.7 - VACATION SCHEDULING** Earned vacation may be taken in one (1) hour increments or longer increments with prior approval from the supervisor. Generally, in order for the Company to meet its contractual obligations to the Government, no more than 10% of the employees within a section will be scheduled at the same time and vacation requests are subject to approval by the supervisor. Vacation requests will be honored on a first come, first served basis with job classification seniority being the tie breaker.

**SECTION 11.8 - VACATION PAYOUT IN CASE OF LAYOFF** Employees who are laid off will be paid unused vacation hours with their final paycheck.

## **ARTICLE 12 - LEAVES OF ABSENCE**

**SECTION 12.1 - BEREAVEMENT** Bereavement - When death occurs in an Employee's immediate family (spouse, mother, father, mother-in-law, father-in-law, son, daughter, brother or sister, brother-in-law, sister-in-law, step-father, step-mother, step-children, step-brother or step-sister, grandfather, grandmother and grandchildren), an Employee upon request will be excused for up to three (3) consecutive days to include the day of the funeral. The Employee shall receive pay at his regular rate, provided it is established that he attended the funeral.

**SECTION 12.2 - PERSONAL/SICK LEAVE** The Company will provide each employee, who has completed their probationary period, with five (5) sick / personal days per year (3 33/ month). Employees may accrue up to eighty (80) hours of sick / personal time. Personal and sick days allotted each employee, and the administration thereof, shall be in accordance with Company Policy at the NETL site.

**SECTION 12.3 - JURY DUTY AND COURT WITNESS ABSENCE** An employee with ninety (90) days or more of continuous service credit who is called for and who performs jury duty or who is subpoenaed to appear in court as a witness will be compensated by the Company for the

difference between payment received for such compulsory jury duty or compulsory court appearance and the payment the employee would have received for the straight time hours they thereby lose from a normal work schedule computed at the employee's established hourly base rate. However, when subpoenaed by a party other than the Company, the employee will not be compensated if the employee, the Company or the Union is a party in the case, or if the employee has any direct interest or financial interest in the case.

In order to be paid by the Company for such leave, the employee must submit to the Program Manager written proof of having served, and of the duration of such service.

**SECTION 12.4 - MILITARY SERVICE** Employees enlisting or entering the military service of the United States, pursuant to the provisions of the Selective Service Act of 1948, as amended, shall be granted all rights and privileges provided by the provisions of the Veteran's Re-employment Right's Act and any other applicable state or federal law that might apply.

**SECTION 12.5 - COMPLIANCE WITH FMLA AND ADA** The parties agree to abide by the provisions of the Family and Medical Leave Act of 1993, and the Americans with Disabilities Act.

### **ARTICLE 13 - MANAGEMENT RIGHTS**

**SECTION 13.1 - RETENTION OF MANAGEMENT PREROGATIVES** Except as expressly modified or restricted by a specific provision of this Agreement, all statutory and inherent management rights, prerogatives and functions customarily and traditionally exercised by the Company to operate its business and direct its employees are hereby expressly reserved and vested exclusively by and to the Company. These rights include, but are not limited to, the right to determine prices of services, volumes of production and methods of financing, to drop or add a product line, to sell, merge, consolidate or lease the business, or any part thereof, to establish, revise or continue policies, practices, or procedures for the conduct of the business, and from time to time, to change or abolish such policies, practices or procedures; the right to determine, and from time to time redetermine, the number, location, relocation and types of its operations, and the methods, processes and materials to be employed, to discontinue processes or operations or to discontinue their performance by employees of the Company; to determine the number of hours per day and per week operations shall be carried on; to select and assign work to such employees in accordance with the requirements determined by Management; to require physical examination and substance abuse screening of employees in accordance with the Company's Substance Abuse Policy; to determine the existence or the lack of work, to make and enforce reasonable rules for maintenance of discipline or efficiency; to suspend, discharge or otherwise discipline employees for cause; and to take such measures as Management of the Company may determine to be necessary for the orderly, efficient and profitable operations of the business.

**ARTICLE 14 - GENERAL PROVISIONS**

**SECTION 14.1 - REST BREAKS** Unless precluded by operational requirements, it is the intention of the Company to provide Bargaining Unit employees two (2) fifteen minute rest breaks during a normal eight (8) hour shift, one (1) in each half of the shift. Rest breaks will occur two (2) hours after the start of the shift and two (2) hours after the end of the lunch break, unless operational requirement necessitate a postponement of the break. There shall not be set time for such rest breaks since their timing will depend upon operational requirements. Such rest breaks, for all employees, shall be included in the computation of time worked. Time spent traveling to or from a rest station shall be included in the fifteen (15) minute time period for rest breaks

**SECTION 14.2 - UNIFORMS** The Company agrees to pay for a uniform service, providing at least five (5) uniform changes or coveralls and lab coats each week for all employees covered by this Agreement. It shall be a stipulation that work uniforms be worn during the employee's scheduled shift. EG&G will designate area and time for laundry exchanges. The Union agrees it shall be the employees' responsibility to replace lost or stolen uniforms.

**SECTION 14.3 - COPY OF AGREEMENT** The Company is to provide each member of the Bargaining Unit with one (1) bound copy of the Collective Bargaining Agreement.

**SECTION 14.4 -** The Company will reimburse employees all licenses required to perform their job, including:

- |                                            |                             |
|--------------------------------------------|-----------------------------|
| 1. Stationary Engineers License            | 6. C.F.C. Certification     |
| 2. Journeyman or Master Plumber License    | 7. Wastewater Certification |
| 3. Journeyman or Master Electrical License | 8. Backflow Prevention      |
| 4. Welding Certification                   | 9. N.I.U.I.P.E.             |
| 5. Automotive ASE Certification            |                             |

Costs associated with obtaining said licenses shall be paid in accordance with Article 4, Sec. 7.

**SECTION 14.5 - SHOE ALLOWANCE** The Company will reimburse employees or provide a voucher for appropriate safety shoes after presentation of an acceptable receipt to the Supervisor, up to one hundred dollars twenty-five (\$125.00) per year.

**SECTION 14.6 - MEAL ALLOWANCE** Employees will be entitled to a meal allowance of \$10.00 if they work ten (10) straight hours without notice the day prior to working.

**SECTION 14.7 - CONTINUOUS PROCESS IMPROVEMENT (CPI)** The Company retains its prerogative to continue its Continuous Process Improvement (CPI) program as it sees fit. The Union and its membership agree to cooperate fully in this program, which may include attending classes, seminars, and meetings, and participating in any other activity or providing any input that the Company determines to be in the employees' and/or the Company's best interest.

### **ARTICLE 15 - SAVINGS CLAUSE/CHANGE IN LAWS**

Should any part hereof or any provision herein contained be rendered or declared invalid by reason of any existing legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this Agreement, shall not invalidate the remaining portion hereof, and they shall remain in full force and effect. The parties further agree that this Agreement may be reopened by either party upon thirty (30) days written notice only for negotiation and agreement regarding the provisions invalidated.

In the event that an agreement regarding the provisions invalidated cannot be reached, the contract, less provisions invalidated will continue in force without change until the expiration of the Agreement.

### **ARTICLE 16 - BULLETIN BOARDS**

The Company will provide appropriate space on Company bulletin boards for the posting of Union notices that have been properly approved for posting by the Company Personnel or Program Manager. Such approval shall not be unreasonably denied.

### **ARTICLE 17 - SAFETY**

17.1 - **SAFE WORK PLACE** The Company will comply with all applicable health and safety laws and regulations and the Union and all employees agree to cooperate toward the objective of eliminating accidents and health hazards. The Company will continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. The Union agrees that the Company may terminate any employee covered by this Agreement who intentionally exposes him/herself or any individual to unsafe acts which could result in serious bodily harm. All employees must immediately report any work-related injury, no matter how slight, to his/her immediate supervisor.

**SECTION 17.2 - QUARTERLY SAFETY MEETINGS** The Company and the Union will cooperate in the investigation and elimination of hazardous conditions and the improvement of the safety record. The Company will hold quarterly Safety Meetings with representatives of the Union. The Company shall establish a Safety Committee. The Committee to consist of the Company Safety Manager, one (1) Bargaining Unit employee from each trade with a maximum of five (5) and one (1) Management Representative.

**SECTION 17.3 - FREQUENCY OF MEETINGS** The Company agrees to provide a minimum of four (4) safety meetings per year.

**SECTION 17.4 - ADHERANCE TO POLICY** The Company and the Union will follow the NETL Environmental Health and Safety Program.

**ARTICLE 18 - NEW EQUIPMENT**

In the event the Employer introduces new equipment or devices which substitute for present equipment being operated or maintained by any employee within the Bargaining Unit, the Company agrees to train Bargaining Unit employees on such equipment to the fullest extent possible. The number selection of employees and manner to be trained will be determined by the Company.

**ARTICLE 19 - SUCCESSORSHIP**

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties thereto, and to their successors and assigns, except as may otherwise be provided by applicable law or federal regulations.

**ARTICLE 20 - APPRENTICESHIP**

**SECTION 20.1 - COMPANY'S DISCRETION** This Article is intended to provide a means for the job and classroom training to produce qualified and competent employees, and may be implemented at the Company's sole discretion.

**SECTION 20.2 - SUPERVISION OF APPRENTICE** The apprentice will be provided with on the job training under the supervision of a (journeyman) and at no time be required to work a shift without the Company's supervision.

**SECTION 20.3 - ANNUAL REVIEW** This Article shall be subject to review annually and may be modified if both parties agree, otherwise it shall remain in full force and effect for the duration of this Agreement.

**SECTION 20.4 - REQUIREMENTS** The apprentice shall be required to successfully complete one (1) of the following six (6) courses each six (6) months in order to progress on the wage scale.

- |                               |                                 |
|-------------------------------|---------------------------------|
| 1. Basic Electricity          | 4. Instrumentation and Controls |
| 2. Refrigeration I            | 5. Refrigeration II             |
| 3. Steam and Boiler Mechanics | 6. Energy Management            |

**SECTION 20.5** - The apprentice shall receive the following percentage of the classification into which they are hired. The apprenticeship is limited to Group 1,2,3, or 4 listed in Exhibit "B"

<u>MONTHS OF SERVICE</u>	<u>PERCENTAGE OF THE RATE</u>	<u>EDUCATION REQUIREMENT</u>
STARTING RATE:	65%	0
6 Months	70%	One Course
12 Months	75%	One Additional Course
18 Months	80%	One Additional Course
24 Months	85%	One Additional Course
30 Months	90%	One Additional Course
36 Months	95%	One Additional Course

**SECTION 20.6 - PERMANENT POSITION** The apprentice shall remain at the 95% rate until a permanent position is open.

**SECTION 20.7 - LICENSE** The apprentice must obtain a City of Pittsburgh Stationary Engineers License prior to a permanent assignment.

**SECTION 20.8 - MAXIMUM NUMBER** The maximum number of apprentices shall not exceed one (1) apprentice per seven (7) journeymen.

**SECTION 20.9 - PERFORMANCE** The apprentice shall be subject to review each six (6) months. If performance standards are not met as determined by the Company, the apprentice may be subject to discipline up to and including discharge.

**ARTICLE 21 - EDUCATION TRUST FUND**

The Employer agrees to pay six cents (\$.06) per hour to the International Union of Operating Engineers, Local 95 Training Fund ("Fund") for all hours paid for all employees covered by this Collective Bargaining Agreement. The Employer shall submit a report listing all hours worked for all eligible employees and submit such report, along with contributions by the 15<sup>th</sup> of the month following the month in which the employees worked. The Employer agrees to be bound by rules and procedures established from time to time by the Trustees of the Fund and by the Agreement and Declaration of Trust governing the Fund. Upon the failure of the Employer to make the required reports or payments to the Fund or its designated agent, the Union and/or the Board of Trustees of the Fund may, in their sole discretion, bring an appropriate action in court of competent jurisdiction to enforce the filing of such reports and the payment of all contributions due and to collect such interest, reasonable counsel fees, costs of suit and payroll audit expense to which the Fund is entitled under the Fund's rules and procedures or the provisions of law.



## **ARTICLE 22 - STEWARD TRAINING**

One (1) shop steward shall be entitled to a leave of one (1) day each calendar year from the Employer for Shop Steward's Training and Education. The Union must notify the Employer at least three (3) weeks in advance thereof. The Steward must, upon returning from the leave, present the Employer with written evidence from the Union that the Steward has used the leave for the purpose of which the leave was intended.

## **ARTICLE 23 - CENTRAL PENSION FUND**

**SECTION 23.1 - PENSION CONTRIBUTION** Effective January 1, 2004, the Company shall contribute \$2.90 for all hours paid for each eligible employee into the Central Pension Fund. Effective January 1, 2005, the contribution will increase to \$3.05. Effective January 1, 2006, the contribution will increase to \$3.25. Effective January 1, 2007, the contribution will increase to \$3.45. Payments are to be forwarded to the International Union of Operating Engineers and Participating Employers, 4115 Chesapeake Street, N.W., Washington, D.C., 20016, to provide for the pension under the terms and conditions of that fund for employees covered hereunder.

**SECTION 23.2 - EMPLOYEE AWARD FEE SHARE** Bargaining unit members will receive the Employee Award Fee in accordance with Company Policy. The employer will contribute the employee's share amount to the Central Pension Fund in accordance with Central Pension Fund guidelines. The Company will furnish the Union and the Pension Fund an itemized list of contributions.

**SECTION 23.3 - 401K SAVINGS PLAN** The Company will provide bargaining unit employees with a payroll withholding option for a 401K Savings Plan that will be deducted each pay period and promptly forwarded to the account administrator. There will be no Company match in this account and the Union agrees to hold the Employer harmless against any liability that incurred as a result of the Company's action, inaction, or omission with respect to this section of the Agreement.

**SECTION 23.4 - HOLD HARMLESS** The Union agrees to indemnify the Company and hold the Company harmless should the Company incur any liability beyond that provided in Article 23 of this Agreement by virtue of the Company's participation in the Central Pension Fund or 401K Savings Plan. The parties recognize that this provision shall not be construed to apply to the Company's obligation to contribute to the Central Pension Fund, nor any obligation to pay liquidated damages, interest charges or other remedies available to the Fund in the event the Company is delinquent in making payment of the contributions due per Article 23.

It is understood that Bargaining Unit members are excluded from the Company's 401K Plan.

## **ARTICLE 24 - NO STRIKE - NO LOCKOUTS**

During the term of this Agreement or any extension of this Agreement, the Company shall not lockout the employees covered by this Agreement; and no strike for any reason, whether or not contemplated by the parties at the time of this contract, shall be in any way, directly or indirectly caused, sanctioned, engaged in, instigated, lead, authorized, assisted, encouraged, ratified or condoned by the Union or of its members, its officers, agents, representatives, stewards or committeemen; nor shall they call, ratify, or engage in any strike, picketing, sympathy strike or protest of Union conduct or any other third party conduct or participate in informational picketing, area standards picketing or handbilling on or adjacent to the premises of the Company.

There shall be no slowdown or any other interference with the production or stoppage of work, nor shall they publicize that the Company is unfair or that there is a dispute between the Company and

any other labor organization; or prevent or attempt to prevent the access of persons to the Company's said premises, equipment or products for any reason whatsoever.

In the event of a breach of this no strike commitment, the Union shall immediately instruct the involved employees that their conduct is in violation of the contract, and that they may be disciplined up to and including discharge by the Company.

## **ARTICLE 25 - PART-TIME/TEMPORARY EMPLOYEES**

**SECTION 25.1 - BENEFITS PRORATA** Part-time employees will receive a pro-rata of benefits based on their percentage of time worked as regular full-time forty (40) hours per week, unless otherwise stipulated.

**SECTION 25.2 - PAY IN LIEU OF BENEFITS** Health & Welfare Cash in Lieu Of, will be provided to part-time employees.

## **ARTICLE 26 - TERMINATION**

This Agreement shall continue in full force and effect until June 30, 2007, from the effective date and thereafter from year to year unless either party shall give at least sixty (60) days prior notice before any expiration date of this Agreement to the other party of its desire to modify or change this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their representatives as of the day and year first written below.

INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
LOCAL 45, AFL-CIO

EG&G TECHNICAL SERVICES

  
William T. Cagney  
Business Manager

  
Susan Dotson, Manager  
Human Resources


  
Jack Barli  
Chief Steward

  
Mary Ford, Manager  
Administrative Services

  
Jim O'Neal  
Assistant Steward

  
Valerie Whetzel, Manager  
Financial Services

  
Michael J. Brantmayer  
Program Manager

  
Lester W. Jordan, Director  
Labor & Employee Relations  
EG&G Technical Services

Date: 8/22/03

Date: 8/22/03

**APPENDIX "A"**

**AUTHORIZATION FOR UNION DUES CHECK-OFF**

**ASSIGNMENT TO, AND AUTHORIZATION TO DEDUCT AND PAY UNION DUES TO INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95, AFL-CIO.**

\_\_\_\_\_  
Employer

Dear Payroll Clerk:

You are hereby authorized and directed for the duration of the Agreement, effective , between the Employer and the Union, to deduct from earnings and pay over to the Union, monthly dues, permit fees, or initiation fees as set by the Union. You are hereby authorized to deduct such dues from my earnings, payable the first pay of each month. In the event of insufficient earnings in the appropriate pay period, it shall be my responsibility to pay my dues directly to the Union.

This authorization shall remain in effect until revoked by me, and shall be irrevocable for a period of one (1) year from the date appearing above (or until the expiration of the present Agreement between the Employer and the Union, whichever is sooner), at which time it may be revoked by written notice by Registered Mail, given by me to the Employer and the Union, or any time during the period of five (5) days prior to the expiration of the one (1) year period (or five (5) days prior to the expiration of the present Agreement, whichever is sooner). If no such notice is given, this authorization shall be irrevocable for successive periods of one (1) year thereafter, or for the term of any succeeding Collective Bargaining Agreement between the Employer and the Union, whichever period is shorter, with the same privilege of revocation at the end of each such period.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Please Print Your Name

**NOTE: One copy to the Employer and one copy to the Union.**

APPENDIX "B"

**WAGES AND CLASSIFICATIONS**

Classifications:

Wages of the following classifications will be paid as follows, unless hired as an apprentice:

Classification	9/1/2003	8/1/2004	7/1/2005	7/1/2006
Auto Mechanics, Electricians, Electronic Technicians, HVAC Mechanics, HVAC Control Systems Mechanics, Pipefitters/Plumbers, Welders, Operator Mechanics,				
a) Stationary Engineers, & Carpenters	\$ 21.62	\$ 22.27	\$ 22.92	\$ 23.57
b) Maintenance Mechanics	\$ 20.86	\$ 21.51	\$ 22.16	\$ 22.81
c) Truck Drivers	\$ 18.87	\$ 19.52	\$ 20.17	\$ 20.82
d) Warehouse Specialist 1	\$ 17.35	\$ 18.00	\$ 18.65	\$ 19.30
e) Warehouse Specialist 2	\$ 18.00	\$ 18.65	\$ 19.30	\$ 19.95
f) Unit Clerk, Sr.	\$ 12.50	\$ 13.15	\$ 13.80	\$ 14.45
g) Unit Secretary	\$ 18.56	\$ 19.21	\$ 19.86	\$ 20.51

Lead employees will be paid one dollar (\$1.00) per hour above the journeyman's wage rate. Effective September 1, 2003, Lead employees will be paid six percent (6%) above the journeyman's wage rate. Effective July 1, 2005, Lead employees will be paid seven percent (7%) above the journeyman's wage rate.



**ATTACHMENT F**







# Small Business Subcontracting Plan

**Research and Development Solutions LLC (RDS)**  
**3604 Collins Ferry Road, 2 Suite 200**  
**Morgantown, WV 26505**

Submitted in response to: RFP No. DE-RP26-04NT41817

for

**Research and Development Support Services for the  
National Energy Technology Laboratory**

This document is hereby submitted as a Small Business Subcontracting Plan to satisfy the applicable requirements of Public Law 95-507 as implemented by FAR Clause 52.219-9.

1. The total estimated dollar value of all planned subcontracting (to all types of business concerns) during the three (3) year Base Period under this contract is: **\$36,000,000, \$12,000,000 for Option Year 1, and \$12,000,000 for Option Year 2.**
2. The following percentage goals (expressed in terms of a percentage of the total planned Subcontracting dollars) are applicable to this contract.
  - (a) Small business concerns: 30% of the total planned subcontracting dollars under this contract are planned for subcontractors who are small business concerns.
  - (b) Veteran-owned small business concerns: 1% of the total planned subcontracting dollars under this contract are planned for subcontractors who are veteran-owned small business concerns. This percentage is included in the percentage shown under 2(a), above.
  - (c) Service-disabled veteran-owned small business concerns: 1% of the total planned subcontracting dollars under this contract are planned for subcontractors who are service-disabled veteran-owned small business concerns. This percentage is included in the percentage shown under 2(a), above.
  - (d) HUBZone small business concerns: 4% of the total planned subcontracting dollars under this contract are planned for subcontractors who are HUBZone small business concerns. This percentage is included in the percentage shown under 2(a), above.
  - (e) Small disadvantaged business concerns: 6% of the total planned subcontracting dollars under this contract are planned for subcontractors who are small disadvantaged business concerns. This percentage is included in the percentage shown under 2(a), above.
  - (f) Women-owned small business concerns: 8% of the total planned subcontracting dollars under this contract are planned for subcontractors who are women-owned small business concerns. This percentage is included in the percentage shown under 2(a), above.
3. The following dollar values correspond to the percentage goals shown in 2 above.

	3-Year Base	Option 1	Option 2
Total Subcontracting Dollars	\$ 36,000,000	\$ 12,000,000	\$ 12,000,000
Small Business Dollars	\$ 10,800,000	\$ 3,600,000	\$ 3,600,000
Veteran-owned Small Business Dollars	\$ 360,000	\$ 120,000	\$ 120,000

	<b>3-Year Base</b>	<b>Option 1</b>	<b>Option 2</b>
Service-disabled Veteran-owned Small Business Dollars	\$ 360,000	\$ 120,000	\$ 120,000
HUBZone Small Business Dollars	\$ 1,440,000	\$ 480,000	\$ 480,000
Small Disadvantaged Dollars	\$ 2,160,000	\$ 720,000	\$ 720,000
Women-owned Small Business Dollars	\$ 2,880,000	\$ 960,000	\$ 960,000

This Small Business Subcontracting Plan is based on the committed use of Principal Small Business Subcontractors and Specialty Small Business Subcontractors that were identified during development of the proposal. We expect to develop and include additional small business participation through outreach efforts during performance of the contract and through our competitive procurements for NETL. Principal products and/or services to be subcontracted under this contract to the various participating small business firms are as follows:

Principal Small Business Subcontractors (Augusta Systems, Inc. and Leonardo Technologies, Inc): Our team includes two (2) small business firms as Principal Small Business Subcontractors who will support both Core Work and Variable Work, and who are committed to the pricing provided in this proposal. We committed participation in the planned work to these firms on a sole-source basis and in broad areas of work. The specific areas of focus for support by these firms are:

- Research and Development (R&D) program/project planning,
- R&D program/project formulations,
- R&D program/project assessments
- R&D program/project strategic development,
- R&D operations, and
- Partnership Development.

Specialty Small Business Subcontractors (DN American, Inc., Gas Technology Institute; Integrated Concepts and Research Corporation and MSE Technology Applications, Inc: Our team includes four (4) Specialty Small Business Subcontractors, including a small disadvantaged business, a woman-owned small disadvantaged business, and an Alaskan native 8(a) firm. These firms will support the off-site variable work under the contract. We committed participation to these firms in sole-source or in competitive subcontract procurements when their areas of specialty are required. The expected areas of focus and support by these firms are:

- Information technology,
- Environmental services,
- Project management support,
- Energy policy formulation,
- Cost/benefit analysis,
- Technology evaluation, and
- Technology transfer.

Additional Competitive Small Businesses: We will actively seek and encourage participation by additional small business firms through comprehensive outreach efforts and through competitive procurements. Areas for participation by these additional small businesses will primarily target supply of routine materials, equipment, supplies, and services without special requirements or expertise and where opportunities for the success of these small business firms are maximized.

7. The following individual will administer the subcontracting program:

Name: Mr. [REDACTED]

Title: Contract Admin Lead

Address and Telephone: EG&G Technical Services; 3604 Collins Ferry Road; Suite 200; Morgantown, WV 26505; 304.599 5941 ext. 133

Mr. [REDACTED] will have overall responsibility for administration of our Small Business Program, the development, preparation and execution of individual subcontracting plans, and for monitoring performance relative to the contractual subcontracting requirements contained in this plan. These duties include:

- a) Developing and maintaining bidder lists of small and small disadvantaged business concerns from all possible sources.
  - b) Ensuring that procurement packages are structured to permit small and small disadvantaged business concerns to participate to the maximum extent possible.
  - c) Assuring inclusion of small and small disadvantaged business concerns in all solicitations for products or services which they are capable of providing.
  - d) Reviewing solicitations to assure that no statements or clauses are included which may tend to restrict or prohibit small/small disadvantaged business participation.
  - e) Ensuring that our proposal reviewers document reasons for not selecting low bids submitted by small and small disadvantaged business concerns.
  - f) Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.
  - g) Attending or arranging for attendance of procurement counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
  - h) RDS, LLC will continue the parent companies (EG&G, Parsons and SAIC) history of leadership and support to regional small business conferences such as Teaming to Win and DOE's Annual Small Business Conference.
  - i) Conducting or arranging for conduct of motivational training for purchasing personnel pursuant to the intent of Public Law 95-507.
  - j) Monitoring attainment of proposed goals.
  - k) Preparing and submitting the required periodic subcontracting reports.
8. The following efforts will be taken to assure that small business, veteran-owned, service-disabled veteran owned, HUBZone small business, small disadvantaged business and women-owned business concerns will have an equitable opportunity to compete for subcontracts:
- a) Maintenance of small, small disadvantaged and women-owned small business concerns source lists, guides, and other data identifying small, veteran-owned, service-disabled veteran owned, HUBZone, small disadvantaged, and women-owned business.
  - b) Utilization of small, veteran-owned, service-disabled veteran owned, HUBZone, small disadvantaged, and women-owned business source lists by buyers.
  - c) Internal efforts to guide and encourage buyers:
    - (i) Attendance at small and small disadvantaged workshops, seminars, and training programs.
    - (ii) Monitoring of activities to assure compliance with subcontracting plan.
- 9 Research and Development Solutions, LLC agrees that the clause entitled "Utilization of Small Business Concerns" will be included in all subcontracts which offer further subcontracting

4. The Principal Small Business Subcontractors and the Specialty Small Business Subcontractors were identified for inclusion on our team based on:
  - 1) Proven experience and world-class or state-of-the-art abilities in the technical requirements or niche technical requirements needed for the work for NETL,
  - 2) Proven record of outstanding safety, quality, schedule, and cost performance consistent with our corporate culture,
  - 3) Proven record in meeting our business requirements for subcontractors, and
  - 4) Compatibility with our performance commitments for NETL.
5. Our outreach efforts for inclusion of additional small business firms in competitive procurements for NETL will include:
  - 1) Web-based procurements using the DOE e-business resources,
  - 2) Local and regional advertisements and advance procurement notices,
  - 3) Corporate resources in subcontracting for similar supplies and services, and
  - 4) Conducting and participating in annual small business conferences.

In particular, we use small business conferences to:

- Identify needs and potential small business sources,
- Explain our procurement and our safety and performance requirements,
- Coach small businesses in successful response to competitive procurement requirements, and
- Identify NETL resources to answer questions or assist.

Our outreach program and our additional efforts for increasing opportunities for small business participation include:

- Use of supplier questionnaires that are simple to file and that allow verification of capabilities, areas of expertise, and supplier responsibility,
- Developing and maintaining a supplier database for quick access to potential qualified bidders,
- Ensuring that procurements are structured to permit participation to the maximum extent by small businesses, i.e., minimizing the use of bonds or performance guarantees to only those situations where it is necessary to protect the interests of the Government, and then only to the extent needed based on evaluated risk,
- Attending and participating in business opportunity workshops for small business, small business seminars, trade fairs, etc.,
- Training and motivating our procurement personnel to the intent of PL 95-507, and
- Actively seeking to develop and maintain mentoring relationships.

The parent companies of RDS, LLC (EG&G, Parsons and SAIC) will continue to provide leadership and support to regional small business conferences such as the annual Teaming To Win Conference and the Department of Energy's Annual Small Business Conference. These conferences provide educational activities, promotional forums, networking resources, and business growth opportunities for area small business concerns. The parent companies of RDS have a proven record in providing support to these events in the region, thereby furthering the advancement of opportunities for regional small businesses. RDS, LLC will continue to consistently provide leadership and support for these events.

6. Indirect costs (check one below):  
 have been,  
 have not been  
included in the goals specified in Item 2.

opportunities, and that all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of FAR 52.219-9, and by assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved and the availability of potential small business subcontractors. Once approved and implemented, plans will be monitored through the submission of periodic reports, periodic visits to subcontractors facilities to review applicable records, and subcontracting program progress.

10. Research and Development Solutions, LLC agrees to submit periodic reports and to cooperate in any studies or surveys as may be required by DOE or the Small Business Administration in order to determine the extent of compliance with the subcontracting plan and with the clause entitled "Utilization of Small Business Concerns" contained in the contract. We further agree to submit Standard Form 294, Subcontracting Report for Individual Contracts, and/or Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the forms. Additionally, we will ensure that our subcontractors agree to submit SF 294 and SF 295, when applicable. The Standard Form 294 and Standard Form 295 will be submitted to:

U.S. Department of Energy  
National Energy Technology Laboratory  
ATTN: NETL AAD Document Control  
P.O. Box 10940, MS 921-143  
Pittsburgh, PA 15236-0940

11. Research and Development Solutions, LLC agrees to maintain at least the following types of records to document compliance with this subcontracting plan:
- a) Source Lists (e.g. PRO-Net) , guides, and other data that identify small business, veteran-owned, service-disabled veteran owned, HUBZone, small business, small disadvantaged business, and women-owned small business concerns.
  - b) Organizations contacted in an attempt to locate sources that are small business, veteran-owned, service-disabled veteran owned, HUBZone, small business, small disadvantaged business, or women-owned business concerns.
  - c) Records on each competitive subcontract solicitation resulting in an award of more than \$100,000, indicating on each solicitation
    - (i) Whether small business concerns were solicited, and if not, why not,
    - (ii) Whether veterans-owned small business concerns were solicited, and if not, why not,
    - (iii) Whether service-disabled veterans-owned small business concerns were solicited, and if not, why not,
    - (iv) Whether HUBZone small business concerns were solicited, and if not, why not,
    - (v) Whether small disadvantaged business concerns were solicited, and if not, why not,
    - (vi) Whether women-owned small business concerns were solicited, and if not, why not, and
    - (vii) If applicable, the reason award was not made to a small or small disadvantaged business concern.
  - d) Records of any other outreach efforts to contact trade associations, business development organizations, and conferences and trade fairs to locate small, veteran-owned, service-disabled veteran-owned, HUBZone small, small disadvantaged, and women-owned small business concerns.

***RDS, LLC***

- e) Records of internal guidance and encouragement provided to buyers through workshops, seminars, and training programs; and monitoring of performance to evaluate compliance with program requirements.
- f) On a contract-by-contract basis, records to support award data including the name, address and business size of each subcontractor.

**ATTACHMENT G**





## PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AM26-04NT41817 for the Research and Development Support Services for the National Energy Technology Laboratory (Contract dated, September 24, 2004, by and between the Government and Research and Development Solutions, LLC (Contractor), the undersigned EG&G Technical Services, Inc. (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at Gaithersburg, Maryland, hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder. Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy. However, nothing in this guarantee shall waive or infringe upon any rights, claims or defenses that Contractor may have against DOE, and which may be raised or asserted by Guarantor.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on September 23, 2004.

EG&G Technical Services, Inc.



NAME: William Neeb

Title: Vice President, Finance

CORPORATE SEAL

## PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AM26-04NT41817 for the Research and Development Support Services for the National Energy Technology Laboratory (Contract dated, 9/24/04) by and between the Government and Research and Development Solutions, LLC (Contractor), the undersigned Science Applications International Corporation (Guarantor), a corporation incorporated in the State of Delaware with its principal place of business at 10260 Campus Point Drive, San Diego, CA 92121 hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract; and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder. Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy. However, nothing in this guarantee shall waive or infringe upon any rights, claims or defenses that Contractor may have against DOE, and which may be raised or asserted by Guarantor.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on September 23, 2004.

Science Applications International Corporation

By: Thomas E. Darcy  
Name: Thomas E. Darcy  
Title: Corporate Executive Vice President and Chief Financial Officer

CORPORATE SEAL



## PERFORMANCE GUARANTEE AGREEMENT

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AM26-04NT41817 for the Research and Development Support Services for the National Energy Technology Laboratory (Contract dated, September 24, 2004, by and between the Government and Research and Development Solutions, LLC (Contractor), the undersigned Parsons Infrastructure & Technology Group Inc. (Guarantor), a corporation incorporated in the State of Nevada with its principal place of business at Pasadena hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder. Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy. However, nothing in this guarantee shall waive or infringe upon any rights, claims or defenses that Contractor may have against DOE, and which may be raised or asserted by Guarantor.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on September 22, 2004.

Parsons Infrastructure & Technology Group Inc.

  
NAME: \_\_\_\_\_

Title: President

CORPORATE SEAL

**J.37 ATTACHMENT H – INCORPORATED PORTIONS OF CONTRACTOR’S PROPOSAL**

**As indicated in the proposal, the use or disclosure of the information in this attachment is subject to the restrictions as stated in the Disclosure of Proprietary RDS, LLC Data Notice provided below:**

**“Disclosure of Proprietary RDS, LLC Data Notice**

RDS, LLC’s proposal, which follows, contains information and data which are privileged, confidential, and/or proprietary to RDS, LLC. This information and data is commercially sensitive and/or financial in nature, is not made available for public review, and is submitted to the government on a confidential basis only in response to a specific government request. The information contained herein is protected, among other things, by the Trade Secrets Act, as codified, and any improper use, distribution, or reproduction is specifically prohibited. No license or right of any kind whatsoever is granted to any third party to use the information contained herein unless a written agreement exists between RDS, LLC and the third party which desires access to the information. The information contained herein is submitted to the government for purposes of review and evaluation in connection with RDS, LLC’s response to the specific government request denoted herein. No other use of the information and data contained herein is permitted without the express written permission of RDS, LLC. Under no condition should the information contained herein be provided in any manner whatsoever to any third party without first receiving the express written permission of RDS, LLC.”

**The following proposed items were considered to add significant value to NETL and are incorporated in accordance with Section H, Clause :**

**Proposal Page ES-2**

**Proposal Pages 1.1-9 and 1.1-10**

**Proposal Pages 1.1-11 and 1.1-12**

**Proposal Pages 1.1-15 and 1.1-17**

**Proposal Page 1.1-21**



**Proposal Page 1.1-24**

**Proposal Page 1.1-49**

“The RDS Team’s seamless transition from our current NETL contracts will provide NETL with continuity of support and the most efficient, lowest-risk transition.

