

B.3 OBLIGATION OF FUNDS

The amount of funds obligated under this contract, in accordance with the Contract Clause entitled “Obligation of Funds,” is \$820,919,720.

B.4 AVAILABILITY OF APPROPRIATED FUNDS

The duties and obligation of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the Department of Energy may legally spend for such purposes.

B.5 CONTRACT VALUE

The contract value consisting of the estimated costs and negotiated fee by fiscal year (base plus option) is set forth below:

Fiscal Year	Estimated Costs	Performance Fee	Multi-Year Cost Reduction Fee	FY TOTAL
Transition Period 2/1/03 – 3/31/03	\$0	\$0	\$0	¹ \$0
FY 2003 (6 mos.)	\$88,436,173	\$2,742,307	\$1,000,000	*\$92,178,480
FY 2004	\$107,658,267	\$4,827,176	\$2,000,000	*\$114,485,443
FY 2005	\$97,439,730	\$4,965,611	\$2,000,000	*\$104,405,341
FY 2006	\$104,606,596	\$5,617,807	\$2,000,000	*\$112,224,403
FY 2007	\$98,791,493	\$5,256,250	\$2,000,000	*\$106,047,743
FY 2008	\$96,779,911	\$6,551,105	\$3,025,622 ² \$100,000	*\$106,356,638
FY 2009	\$142,526,317	\$7,443,291	² \$200,000	\$150,169,608
FY 2010	\$108,349,753	\$7,732,035	² \$200,000	\$116,281,788
FY 2011	\$117,283,000	TBD	TBD	TBD
FY 2012	\$119,745,000	TBD	TBD	TBD
FY 2013 (6 mos.)	\$61,129,500	TBD	TBD	TBD
Total Contract Value	\$1,142,745,740	\$45,135,582	\$12,525,622	\$1,200,406,944

B.6 ALLOWABILITY OF SUBCONTRACTOR FEE

All fees to be paid to members of a Contractor team, including affiliates, identified in the offer must be included in the available fee payable under Clause B.2. The term affiliate is defined as, associated business concerns or individuals if, directly or indirectly (1) either one controls or can control the other; or (2) a third party controls or can control both. A “Contractor Team Arrangement”, as used in the FAR, means an arrangement in which (1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or (2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program. For the purpose of this clause, this definition does not apply to the subcontractors whose contracts have been assumed, so long as the terms and conditions of those subcontracts are not altered as a result of interactions with the Offeror prior to award of this contract.

¹The Transition Period costs of \$3,518 are included in the FY03 costs of \$88,436,173.

² The actual fee earned for Cost Reductions for the Option Period (2nd half of FY08 thru 1st half of FY13) will not be determined until the end of the Option Period for.

*Fiscal Year Total reflects actual costs, actual performance fee and multi-year cost reduction fee earned for the base contract period.

SECTION H
SPECIAL CONTRACT REQUIREMENTS

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H.12 PERFORMANCE CRITERIA, MEASURES, OUTPUT TARGETS, AND INCENTIVES

The Government will develop performance criteria, measures and output targets for the coming fiscal year which will be set forth in the Work Authorization Directives developed and issued pursuant to the Special Contract Requirement entitled WORK AUTHORIZATION SYSTEM. The Contractor may also propose additional performance measures, which will be negotiated prior to placement in the Work Authorization Directives. The evaluation areas and individual requirements that will be subject to incentivization will be included in the Performance Evaluation and Measurement Plan developed and issued pursuant to the Clause in Section I entitled, TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT. The evaluation of performance against measures will be a consideration in (1) development of fee awards, if any, (2) the DOE decision whether to extend the contract and (3) terminating the contract for default.

NOTE – COST REDUCTION INCENTIVE: The Department of Energy (DOE) expects the contractor to manage and operate the Strategic Petroleum Reserve in an efficient and effective manner. To this end, the contractor will be provided an incentive to achieve significant cost reduction without adversely affecting the level of performance required by the contract. Details implementing this incentive will be set forth in the annual Performance Evaluation and Measurement Plan issued pursuant to Clause I.93 of this contract. DOE anticipates that up to 25 percent of annual available fee will be assigned to this evaluation area in the Performance Evaluation and Measurement Plan.

The baseline for the measurement of the contractor's performance will be the contractor's approved Annual Operating Plan established each fiscal year. Reductions resulting from schedule delays, direction given by the DOE or changes in the mission, work scope, or routine reorganization of the contractor due to changes in the budget do not qualify for this incentive.

H.13 ADVANCE UNDERSTANDING ON HUMAN RESOURCES

(a) Advance Understanding on Human Resources

The Department and the successful Offeror (Contractor) will reach an advance understanding on Contractor human resources during the transition period. The advance understanding enables both the Contractor and the DOE to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowance and disputes; provide appropriate and reasonable compensation levels to recruit and retain Contractor employees to meet DOE mission objectives, and assure prudent expenditure of public funds. Areas generally covered by the advance understanding include compensation (all forms of

compensation, regardless of whether reimbursed by the Government, must be disclosed to the Contracting Officer), welfare benefits, labor relations, retirement plans, training, educational assistance, awards programs, employee assistance, and paid leaves and holidays. DOE Order 350.1, "Contractor Human Resource Management Programs," will serve as the governing document for development of the advance understanding. It is understood that any advance understanding will be appended to the Contract as Section J, Appendix A.

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

- (b) The maximum senior executive compensation allowable under this contract shall be governed by 65 Fed. Reg. 30640 (2000) and subsequent updates. The term "compensation" means the total amount of wages, salary, bonuses, and deferred compensation for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in an employee's cost accounting records for the fiscal year.

H.14 FINES AND PENALTIES

The Contractor shall not use the Letter of Credit to pay or reimburse itself for any fine or penalty without specific authorization of the Contracting Officer.

H.15 SERVICES

Services acquired by the Contractor for the Strategic Petroleum Reserve are acquired for the benefit of the Department of Energy and are immediately resold to the Government as a resale of services in accordance with Texas and Louisiana sales tax provisions.

**SECTION I
CONTRACT CLAUSES**

Application of FAR and DEAR Clauses is incorporated by reference as explained in FAR 52.252-2. Subsequent changes to FAR and DEAR are not applicable to this contract unless incorporated by Contract Modification. Additional information required by certain clauses is provided below.

<u>Clause No.</u>	<u>FAR/DEAR Reference</u>	<u>Title</u>	<u>Fill-In Information (See FAR 52.104(d))</u>
I.1	FAR 52.202-1 DEAR 952.202-1	DEFINITIONS (JUL 2004) (AS MODIFIED BY DEAR DEFINITIONS (APR 2002)	None
I.2	FAR 52.203-3	GRATUITIES (APR 1984)	None
I.3	FAR 52.203-5	COVENANT AGAINST CONTINGENT FEES (APR 1984)	None
I.4	FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)	None
I.5	FAR 52.203-7	ANTI-KICKBACK PROCEDURES (JULY 1995)	None
I.6	FAR 52.203-8	CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)	None
I.7	FAR 52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)	None
I.8	FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEPT 2007)	None
I.9	FAR 52.204-1	APPROVAL OF CONTRACT (DEC 1989)	DOE Procurement Executive or Designee
I.10	FAR 52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)	None
I.11	FAR 52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)	None
I.12	FAR 52.211-5	MATERIAL REQUIREMENTS (AUG 2000)	None
I.13	FAR 52.215-8	ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)	None
I.14	FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)	None
I.15	FAR 52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)	None
I.16	FAR 52.219-16	LIQUIDATED DAMAGES- SUBCONTRACTING PLAN (JAN 1999)	None

I.17	FAR 52.219-25	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM – DISADVANTAGED STATUS AND REPORTING (APR 2008)	None
I.18	FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)	None
I.19	FAR 52.222-2	PAYMENT OF OVERTIME PREMIUM (JULY 1990)	OT Premium: \$375,000
I.20	FAR 52.222-3	CONVICT LABOR (JUNE 2003)	None
I.21	FAR 52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION (JULY 2005)	None
I.22	FAR 52.222-6	DAVIS-BACON ACT (JULY 2005)	None
I.23	FAR 52.222-7	WITHHOLDING OF FUNDS (FEB 1988)	None
I.24	FAR 52.222-8	PAYROLLS AND BASIC RECORDS (FEB 1988)	None
I.25	FAR 52.222-9	APPRENTICES AND TRAINEES (JULY 2005)	None
I.26	FAR 52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)	None
I.27	FAR 52.222-11	SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)	None
I.28	FAR 52.222-12	CONTRACT TERMINATION-DEBARMENT (FEB 1988)	None
I.29	FAR 52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)	None
I.30	FAR 52.222-14	DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)	None
I.31	FAR 52.222-15	CERTIFICATION OF ELIGIBILITY (FEB 1988)	None
I.32	FAR 52.222-16	APPROVAL OF WAGE RATES (FEB 1988)	None
I.33	FAR 52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)	None
I.34	FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)	None
I.35	FAR 52.222-26	EQUAL OPPORTUNITY (MAR 2007)	None
I.36	FAR 52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)	None
I.37	FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998)	None

I.38	FAR 52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEPT 2006)	None
I.39	FAR 52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)	None
I.40	FAR 52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (NOV 2007)	None
I.41	FAR 52.225-9	BUY AMERICAN ACT – CONSTRUCTION MATERIALS (FEB 2009)	Paragraph (b) (2): None
I.42	FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JUL 1995)	As Required
I.43	FAR 52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION ((AUG 2003)	None
I.44	DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)	None
I.45	FAR 52.223-10	WASTE REDUCTION PROGRAM (AUG 2000)	None
I.46	FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001)	None
I.47	FAR 52.223-12	REFRIGERATOR EQUIPMENT AND AIR CONDITIONERS (MAY 1995)	None
I.48	FAR 52.223-14	TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)	None
I.49	FAR 52.224-1	PRIVACY ACT NOTIFICATION (APR 1984)	None
I.50	FAR 52.224-2	PRIVACY ACT (APR 1984)	None
I.51	FAR 52.225-1	BUY AMERICAN ACT - SUPPLIES (FEB 2009)	None
I.52	FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	None
I.53	FAR 52.226-1	UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)	None
I.54	FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)	(All of Volumes II and III), (August 9, 2002)
I.55	FAR 52.230-2	COST ACCOUNTING STANDARDS (OCT 2008)	None
I.56	FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)	None
I.57	FAR 52.232-17	INTEREST (OCT 2008)	None
I.58	FAR 52.232-23	ASSIGNMENT OF CLAIMS (JAN 1986)	None
I.59	FAR 52.233-1	DISPUTES (JUL 2002) ALTERNATE I (DEC 1991)	None

I.60	FAR 52.233-3	PROTEST AFTER AWARD (AUG 1996) ALTERNATE I (JUN 1985)	None
I.61	FAR 52.237-3	CONTINUITY OF SERVICES (JAN 1991)	None
I.62	FAR 52.242-1	NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)	None
I.63	FAR 52.242-13	BANKRUPTCY (JUL 1995)	None
I.64	FAR 52.244-5	COMPETITION IN SUBCONTRACTING (DEC 1996)	None
I.65	FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)	None
I.66	FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)	None
I.67	FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.- FLAG COMMERCIAL VESSELS (FEB 2006)	None
I.68	FAR 52.249-6	TERMINATION (COST REIMBURSEMENT) (MAY 2004) (MODIFIED)	Clause Attached (full text)
I.69	FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)	None
I.70	FAR 52.251-1	GOVERNMENT SUPPLY SOURCES (MODIFIED) (APR 1984)	Clause Attached (full text)
I.71	FAR 52.251-2	INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)	Correct last citation to read "41 CFR 101-38."
I.72	FAR 52.252-2	CLAUSES INCORPORATED BY REFERENCE (FEB 1998)	Clause Attached (full text)
I.73	FAR 52.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)	Clause Attached (Full Text)
I.74	FAR 52.253-1	COMPUTER GENERATED FORMS (JAN 1991)	None
I.75	DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)	None
I.76	DEAR 952.204-2	SECURITY (AUG 2009)	None
I.77	DEAR 952.204-70	CLASSIFICATION/DECLASSIFICATON (SEP 1997)	None
I.78	DEAR 952.247-70	FOREIGN TRAVEL (AUG 2009)	None
I.79	DEAR 952.204-75	PUBLIC AFFAIRS (DEC 2000)	None
I.80	DEAR 952.209-72	ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALERNATE I	Paragraph (b)(1)(i) three (3) years. The words "advisory and assistance services" used throughout this clause shall be changed to "management and professional support services"
I.81	DEAR 952.215-70	KEY PERSONNEL (DEC 2000)	Section J – Appendix G
I.82	DEAR 952.217-70	ACQUISITION OF REAL PROPERTY (APR 1984)	None
I.83	RESERVED		
I.84	DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUNE 1997)	None

I.85	DEAR 952.251-70	CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)	None
I.86	DEAR 970.5203-1	MANAGEMENT CONTROLS (JUNE 2007)	None
I.87	DEAR 970.5203-2	PERFORMANCE IMPROVEMENT AND COLLABORATION (MAY 2006)	None
I.88	DEAR 970.5203-3	CONTRACTOR'S ORGANIZATION (DEC 2000) (DEVIATION) [USE DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (APR 1984)]	Clause Attached (Full Text)
I.89	DEAR 970.5204-1	COUNTERINTELLIGENCE (DEC 2000)	None
I.90	DEAR 970.5204-2	LAWS, REGULATIONS, AND DOE/SPRPMO DIRECTIVES (DEC 2000)	None
I.91	DEAR 970.5204-3	ACCESS TO AND OWNERSHIP OF RECORDS (JULY 2005)	Contractor-owned records: (b): Paragraphs (1) through (4) (Paragraph (5) is not applicable to this solicitation/contract)
I.92	DEAR 970.5208-1	PRINTING (DEC 2000)	None
I.93	DEAR 970.5215-1	TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000), ALTERNATE I (DEC 2000) AND ALTERNATE III (DEC 2000)	Alternate III, paragraph (f): 10 calendar days
I.94	RESERVED		
I.95	DEAR 970.5215-3	CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009), ALTERNATE II (AUG 2009)	Clause Attached (Full Text)
I.96	RESERVED		
I.97	DEAR 970.5222-1	COLLECTIVE BARGAINING AGREEMENTS-MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)	None
I.98	DEAR 970.5222-2	OVERTIME MANAGEMENT (DEC 2000)	None
I.99	DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)	None
I.100	DEAR 970.5223-2	AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)	None
I.101	DEAR 970.5226-1	DIVERSITY PLAN (DEC 2000)	None
I.102	DEAR 970.5226-3	COMMUNITY COMMITMENT (DEC 2000)	None
I.103	DEAR 970.5227-1	RIGHTS IN DATA—FACILITIES (DEC 2000)	None
I.104	DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002)	None
I.105	DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)	None
I.106	DEAR 970.5227-6	PATENT INDEMNITY SUBCONTRACTORS (DEC 2000)	None
I.107	DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)	None

I.108	DEAR 970.5227-11	PATENT RIGHTS - MANAGEMENT AND OPERATING CONTRACTS, FOR PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)	None
I.109	DEAR 970.5228-1	INSURANCE-LITIGATION AND CLAIMS (AUG 2009)	None
I.110	DEAR 970.5229-1	STATE AND LOCAL TAXES (DEC 2000)	None
I.111	DEAR 970.5231-4	PREEXISTING CONDITIONS (DEC 2000) ALTERNATE I (DEC 2000)	Insert in paragraph (a) "April 1, 2003" "Strategic Petroleum Reserve" "DE-AC96-93PO18000"
I.112	DEAR 970.5232-1	REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)	None
I.113	DEAR 970.5232-2	PAYMENTS AND ADVANCES (DEC 2000) ALTERNATE II (DEC 2000), ALTERNATE III (DEC 2000)	Insert in Paragraph (c) "Appendix C"
I.114	DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (AUG 2009) AS AMENDED BY ACQUISITION LETTER 2009-09 (JUNE 2009)	Clause Attached in Full Text
I.115	DEAR 970.5232-4	OBLIGATION OF FUNDS (DEC 2000)	Insert in Paragraph (a) "Set forth in Section B." Insert in Paragraph (c) "90", "90".
I.116	DEAR 970.5232-5	LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)	None
I.117	DEAR 970.5232-6	WORK FOR OTHERS FUNDING AUTHORIZATIONS (DEC 2000)	None
I.118	DEAR 970.5232-7	FINANCIAL MANAGEMENT SYSTEM (DEC 2000)	None
I.119	DEAR 970.5232-8	INTEGRATED ACCOUNTING (DEC 2000)	None
I.120	DEAR 970.5236-1	GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)	None
I.121	RESERVED		
I.122	DEAR 970.5242-1	PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)	None
I.123	DEAR 970.5243-1	CHANGES (DEC 2000)	None
I.124	DEAR 970.5244-1	CONTRACTOR PURCHASING SYSTEM (AUG 2009)	None
I.125	DEAR 970.5245-1	PROPERTY (DEC 2000)	None
I.126	DEAR 970.5223-5	DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY (OCT 2003)	None
I.127	FAR 52.222-39	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES FOR FEES (DEC 2004)	None
I.128	FAR 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)	None

I.129	FAR 52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEPT 2007)	None
I.130	FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (AUG 2007)	None
I.131	FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS (DEC 2007)	None
I.132	FAR 52.239-1	PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)	None
I.133	FAR 52.204-10	REPORTING SYBCONTRACT AWARDS (SEPT 2007)	None
I.134	FAR 52.223-2	AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007)	None
I.135	FAR 52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)	None
I.136	FAR 52.203-14	DISPLAY OF HOTLINE POSTERS (DEC 2007)	Insert in Paragraph (b) (3) Posters – <i>DOE Hotline Poster</i> . Obtain from http://ig.energy.gov/hotline.htm
I.137	FAR 52.223-16	IEEE STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007)	None
DOE-I-1002		MODIFICATION BY DOE ACQUISITION LETTER 2008-05 TO FAR 52.223-5	Clause Attached (Full Text)
DOE-I-1003		MODIFICATION BY DOE ACQUISITION LETTER 2008-05 TO FAR 52.223-10	Clause Attached (Full Text)
DOE-I-1004		MODIFICATION BY DOE ACQUISITION LETTER 2008-05 TO DEAR 970.5223-2	Clause Attached (Full Text)
DOE-I-1005		MODIFICATION BY DOE ACQUISITION LETTER 2008-05 TO DEAR 970.5223-5	Clause Attached (Full Text)
I.138	FAR 52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)	None

Clause I.68 FAR 52.249-6 - TERMINATION (COST REIMBURSEMENT) (MAY 2004) (MODIFIED)

- (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 paragraph (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 49.001 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 paragraph (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 paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation as supplemented in subpart 970.31 of the Department of Energy 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.

Clause I.70 FAR 52.251-1 - GOVERNMENT SUPPLY SOURCES (MODIFIED) (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 "Property," shall apply to all property acquired under such authorization.

Clause I.72 FAR 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):

<http://www.arnet.gov/far/> (Federal Acquisition Regulations)

[Acquisition Regulation](#) (Department of Energy Acquisition Regulations)

Clause I.73 FAR 52.252-6 - AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

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

Clause I.88 DEAR 970.5203-3- CONTRACTOR'S ORGANIZATION (DEC 2000) (DEVIATION)
[Use DEAR 970.5204-12 CONTRACTOR'S ORGANIZATION (APR 1984)]

- (a) Organization chart. As promptly as possible after the execution of this Contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (b) Supervisory representative of Contractor. Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site at all times. This also applies to off-site work.
- (c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the Contractor to remove the employee.

Clause I.95

DEAR 970.5215-3 - CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES — FACILITY MANAGEMENT CONTRACTS (AUG 2009) ALTERNATE II (AUG 2009)

(a) General. (1) The payment of earned fee, fixed fee, profit, or share of cost savings under this contract is dependent upon –

(i) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to environment, safety and health (ES&H), which includes worker safety and health (WS&H), including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or Contractor employees' compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ES&H performance requirements of this contract are set forth in its ES&H terms and conditions, including the DOE approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ES&H compliance.

(3) The performance requirements of this contract relating to the safeguarding of Restricted Data and other classified information are set forth in the clauses of this contract entitled, "Security" and "Laws, Regulations, and DOE Directives," as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this contract relating to ES&H or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the contract pursuant to the clause of this contract entitled, "Total Available Fee: Base Fee Amount and Performance Fee Amount," otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by the Contracting Officer.

(b) Reduction Amount. (1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, the Contracting Officer must consider the Contractor's overall performance in meeting the ES&H or security requirements of the contract. Such consideration must include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range (see 48 CFR 970.1504-1-2). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ES&H only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ES&H and compliance in related areas;

or of safeguarding Restricted Data and other classified information and compliance in related areas.

- (v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ES&H standards are routinely practiced (e.g., Voluntary Protection Program, ISO 14000).
- (vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).
- (vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ES&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ES&H programs).
- (viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ES&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(4)(i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this clause if it is determined that a performance failure warranting a reduction under this clause occurs within the evaluation period.

(ii) The amount of reduction under this clause, in combination with any reduction made under any other clause in the contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by the Contracting Officer or Fee Determination Official as otherwise payable based on the Contractor's performance during the evaluation period. Where the contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(v) At the end of the contract –

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other clause of the contract.)

(c) Environment, Safety and Health (ES&H). Performance failures occur if the Contractor does not comply with the contract's ES&H terms and conditions, including the DOE approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ES&H. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of

the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ES&H. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ES&H. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per DOE Order 231.1-2 requirements; or internal oversight of DOE Order 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.
- (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.
- (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this clause).
- (iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.
- (ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.
- (iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.
- (iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

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

- (i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimum level of performance has been established in the specific incentive;
- (ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

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

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

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

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

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

- DOE-I-1003 Modification by DOE Acquisition Letter 2008-05 to FAR 52.223-5 Pollution Prevention and Right-to-Know Information
Change "section 503 of Executive Order 13148" to "Implementing Instruction VIII of Executive Order 13423" in paragraph (a); change "section 502 and 503 of Executive Order 13148" to "Implementing Instruction VIII of Executive Order 13423" in paragraph (c)(6); and change "Section 401 of Executive Order 13146" to "Section 3(b) of Executive Order 13423" in the additional sentence required by Alternates I or II. (End of Clause)
- DOE-I-1004 Modification by DOE AL 2008-05 to FAR 52.223-10 Waste Reduction Program
Change "section 503 of Executive Order 13148" to "Implementing Instruction VIII of Executive Order 13423" in paragraph (a); change "section 502 and 503 of Executive Order 13148" to "Implementing Instruction VIII of Executive Order 13423" in paragraph (c)(6); and change "Section 401 of Executive Order 13146" to "Section 3(b) of Executive Order 13423" in the additional sentence required by Alternates I or II. (End of Clause)
- DOE-I-1005 Modification by DOE AL 2008-05 to DEAR 970.5223-2 Affirmative Procurement Program
Change "Executive Order 13101" to "Executive Order 13423" in paragraph (a).
(End of Clause)

DOE-I-1006 Modification by DOE AL 2008-05 to DEAR 970.5223-5 DOE Motor Vehicle Fleet Fuel Efficiency

Change "Executive Order 13149, Greening the Government through Federal Fleet and Transportation Efficiency" to "Executive Order 13423" where it first appears; change "Executive Order 13149 (April 2001)" to "Executive Order 13423" at its second appearance; and change "Section 506 of Executive Order 13149" to "Section 8 of Executive Order 13423" at its final appearance. (End of Clause)

Clause I.114 DEAR 970.5232-3 ACCOUNTS, RECORDS, INSPECTION (AUG 2009) AS AMENDED BY DOE AL 2009-09 (JUNE 2009)

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause, Access to and Ownership of Records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) Disposition of records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause, Access to and Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.
- (i) Internal audit. The Contractor agrees to design and maintain an internal audit plan and an internal audit organization.
 - (1) Upon contract award, the exercise of any contract option, or the extension of the contract, the Contractor must submit to the Contracting Officer for approval an Internal Audit Implementation Design to include the overall strategy for internal audits. The Audit Implementation Design must describe:
 - (i) The internal audit organization's placement within the Contractor's organization and its reporting requirements;
 - (ii) The audit organization's size and the experience and educational standards of its staff;
 - (iii) The audit organization's relationship to the corporate entities of the Contractor;
 - (iv) The standards to be used in conducting the internal audits;

- (v) The overall internal audit strategy of this contract, considering particularly the method of auditing costs incurred in the performance of the contract;
 - (vi) The intended use of external audit resources;
 - (vii) The plan for audit of subcontracts, both pre-award and post-award; and
 - (viii) The schedule for peer review of internal audits by other Contractor internal audit organizations, or other independent third party audit entities approved by the DOE Contracting Officer.
- (2) By each January 31 of the contract performance period, the Contractor must submit an annual audit report, providing a summary of the audit activities undertaken during the previous fiscal year. That report shall reflect the results of the internal audits during the previous fiscal year and the actions to be taken to resolve weaknesses identified in the Contractor's system of business, financial, or management controls.
 - (3) By each June 30 of the contract performance period, the Contractor must submit to the Contracting Officer an annual audit plan for the activities to be undertaken by the internal audit organization during the next fiscal year that is designed to test the costs incurred and Contractor management systems described in the internal audit design.
 - (4) The Contracting Officer may require revisions to documents submitted under paragraphs (i)(1), (i)(2), and (i)(3) of this clause, including the design plan for the internal audits, the annual report, and the annual internal audits.
- (j) Remedies. If at any time during contract performance, the Contracting Officer determines that unallowable costs were claimed by the Contractor to the extent of making the Contractor's management controls suspect, or the Contractor's management systems that validate costs incurred and claimed suspect, the Contracting Officer may, in his or her sole discretion, require the Contractor to cease using the special financial institution account in whole or with regard to specified accounts, requiring reimbursable costs to be claimed by periodic vouchering. In addition, the Contracting Officer, where he or she deems it appropriate, may: Impose a penalty under 48 CFR 970.5242-1, Penalties for Unallowable Costs; require a refund; reduce the Contractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this contract.

**U. S. DEPARTMENT OF ENERGY - STRATEGIC PETROLEUM RESERVE
PROPOSED FISCAL YEAR 2010 DIVERSITY CONTRACTING GOALS
DynMcDermott Petroleum Operations Company
Contract No. DE-AC96-03PO92207**

DOE PRIME CONTRACTS	FISCAL YEAR 2008 ACTUALS		FISCAL YEAR 2009 PROJECTED		FISCAL YEAR 2010 PROPOSED GOALS	
	\$000	%	\$000	%	\$000	%
Total Obligations	N/A	N/A	N/A	N/A	N/A	N/A
Small Business	N/A	N/A	N/A	N/A	N/A	N/A
Small Business Set-Aside	N/A	N/A	N/A	N/A	N/A	N/A
8(a) Contracts	N/A	N/A	N/A	N/A	N/A	N/A
Other Disadvantaged Business	N/A	N/A	N/A	N/A	N/A	N/A
Woman-owned Business	N/A	N/A	N/A	N/A	N/A	N/A
M&O CONTRACTS						
Total Obligations	47,035	100.0	50,046	100.0	49,654	100.0
Small Business	18,440	39.21	23,221	46.4	23,039	46.4
Small Disadvantaged Business	5,662	12.04	2,502	5.0	2,483	5.0
8(a) Contracts	Included in SDB	Included in SDB	Included in SDB	Included in SDB	Included in SDB	Included in SDB
Veteran Owned Small Business	N/A	N/A	N/A	N/A		N/A
Service-Disabled Veteran Owned Small Business	303	.64	1,501	3.0	1,490	3.0
HUBZone Small Business	2,977	6.33	1,501	3.0	1,490	3.0
Small Woman-Owned Business	5,642	12.00	2,502	5.0	2,483	5.0

Prepared By: Neil Cagle (504) 734-4466

Date: August 25, 2009

<u>DOE/SPRPMO DIRECTIVES</u>	<u>Date</u>	<u>Title</u>
DOE O 110.3A	01/25/07	Conference Management
DOE O 130.1	09/29/95	Budget Formulation Process
DOE O 142.1	01/13/04	Classified Visits Involving Foreign Nationals
DOE O 142.3	06/18/04	Unclassified Foreign Visits and Assignments
Change 1	02/28/08	
DOE O 150.1	05/08/08	Continuity Program
DOE O 151.1C	11/02/05	Comprehensive Emergency Management System
DOE O 200.1A	12/23/08	Information Management Program
DOE O 205.1A	12/04/06	Cyber Security Management
DOE O 206.1	01/16/09	Department of Energy Privacy Program
DOE O 210.2	06/12/06	DOE Corporate Operating Experience Program
DOE O 221.1A	04/19/08	Reporting Fraud, Waste, and Abuse to the Office of Inspector General
DOE O 221.2A	02/25/08	Cooperation with the Office of Inspector General
DOE O 225.1A	11/26/97	Accident Investigations
DOE O 226.1A	07/31/07	Implementation of DOE Oversight Policy
DOE O 231.1A	08/19/03	Environment, Safety and Health Reporting
Admin Change	06/03/04	
DOE O 241.1A	04/09/01	Scientific and Technical Information Management
DOE O 243.1	02/03/06	Records Management Program
DOE O 243.2	02/02/06	Vital Records
DOE O 251.1A	01/30/98	Directives System
DOE O 252.1	11/19/99	Technical Standards
DOE O 350.1	09/30/96	Contractor Human Resource Management Programs
Change 001	05/08/98	
DOE O 412.1	04/20/99	Work Authorization System
DOE O 413.1B	10/28/08	Internal Control Program
DOE O 413.3A	07/28/06	Program and Project Management for the Acquisition of Capital Assets
Change 1	11/17/08	
DOE O 414.1C	06/17/05	Quality Assurance
DOE O 420.1B	12/22/05	Facility Safety
DOE O 430.1B	09/24/03	Real Property Asset Management
DOE O 430.2B	02/27/08	Departmental Energy, Renewable Energy and Transportation Management
DOE O 440.2B	11/27/02	Aviation Management Safety
Change 1	11/19/06	
DOE O 442.1A	06/06/01	Employee Concerns Program
DOE O 450.1A	06/04/08	Environmental Protection Program

DOE O 460.1B	04/04/03	Packaging and Transportation Safety
DOE O 460.2A	12/22/04	Departmental Materials Transportation and Packaging Management
DOE O 470.2B	10/31/02	Independent Oversight and Performance Assurance Program
DOE O 470.3B	08/12/08	Graded Security Protection Plan
DOE O 471.1A	06/30/00	Identification and Protection of Unclassified Controlled Nuclear Information
DOE O 471.3	04/09/03	Protecting Official Use Only Information
DOE O 475.1	12/10/04	Counterintelligence Program
DOE O 475.2	08/28/07	Identifying Classified Information
DOE O 534.1B	01/06/03	Accounting
DOE O 544.1	10/12/04	Priorities and Allocations Program
DOE O 551.1C	06/24/08	Official Foreign Travel
DOE O 580.1 Change 1	12/07/05 05/08/08	Department of Energy Personal Property Management Program
DOE 1340.1B	01/07/93	Management of Public Communications Publications and Scientific Technical and Engineering Publications
DOE 1450.4	11/12/92	Consensual Listening-In to or Recording Telephone/Radio Conversations
DOE O 2340.1C	06/08/92	Coordination of General Accounting Office Activities
DOE 5480.19 Change Change 2	07/09/90 05/18/92 10/23/01	Conduct of Operations Requirements for DOE Facilities
DOE 5639.8A	07/23/93	Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities
DOE 5670.1A	01/15/92	Management and Control of Foreign Intelligence
DOE M 205.1-3	04/17/06	Telecommunications Security Manual
DOE M 205.1-4	03/08/07	National Security System Manual
DOE M 205.1-5 Admin Chg 1	08/12/08 09/01/09	Cyber Security Process Requirements Manual
DOE M 205.1-6 Admin Chg 1	12/23/08 09/01/09	Media Sanitization Manual
DOE M 205.1-7 Admin Chg 1	01/05/09 09/01/09	Security Controls for Unclassified Information Systems
DOE M 205.1-8 Admin Chg 1	01/08/09 09/01/09	Cyber Security Incident Management Manual
DOE M 231.1-1A Change 1 Change 2	03/19/04 09/09/04 06/12/07	Environmental Safety and Health Reporting Manual
DOE M 231.1-2	08/19/03	Occurrence Reporting and Processing of Operations Information
DOE M 251.1-1A	01/30/98	Directives System Manual

DOE M 440.1-1A	01/09/06	DOE Explosives Manual
DOE M 441.1-1	03/07/08	Nuclear Material Packaging Manual
DOE M 450.4-1	11/01/06	Integrated Safety Management System Manual
DOE M 470.4-1 Change 1	08/26/05 03/07/06	Safeguards and Security Program Planning and Management
DOE M 470.4-2A	07/23/09	Physical Protection
DOE M 470.4-3A	11/05/08	Contractor Protective Force
DOE M 470.4-4A	01/16/09	Information Security Manual
DOE M 470.4-5	08/26/05	Personnel Security
DOE M 470.4-6	08/26/05	Nuclear Material Control and Accountability
DOE M 470.4-7	08/26/05	Safeguards and Security Program References
DOE M 471.3-1	04/09/03	Manual for Identifying and Protecting Official Use Only Information
DOE M 475.1-1B	08/28/07	Manual for Identifying Classified Information
DOE N 203.1	10/02/00	Software Quality Assurance
DOE N 205.2	11/01/99	Foreign National Access to Cyber Systems
DOE N 205.3	11/23/99	Password Generation, Protection, and Use
DOE N 205.8	02/11/04	Cyber Security Requirements for Wireless Devices and Information Systems
DOE N 205.9	02/19/04	Certification and Accreditation Process for Information Systems Including National Security Systems
DOE N 205.10	02/19/04	Cyber Security Requirement for Risk Management
DOE N 205.11	02/19/04	Security Requirements for Remote Access to DOE and Applicable Contractor Information Technology Systems
DOE N 206.4	06/29/07	Personal Identity Verification
SPRPMO O 130.1B Change 1	03/14/05	Management and Operating Contractor's Annual Operating Plan Formulation and Execution
SPRPMO O 151.2B	06/06/06	Drawdown Readiness Program
SPRPMO O 200.1	12/11/00	Intranet/Internet Web Page Publishing Process
SPRPMO O 200.2	02/02/02	Information Management Council and Information Systems Planning Committee
SPRPMO O 200.3	07/12/07	Information Technology Guidance Implementation Process
SPRPMO O 206.1 Change 1	11/01/06 02/01/07	Personal Identity Verification
SPRPMO O 210.1A	09/22/06	Milestone Control
SPRPMO O 220.1C	10/04/06	On-Site Management Appraisals

SPRPMO O 220.2D	07/15/09	Observation Reports
SPRPMO O 231.1A	03/22/07	Occurrence Reporting and Processing System
Change 1	11/26/08	
SPRPMO O 414.1B	11/07/05	Quality Assurance
SPRPMO O 420.1B	05/18/06	Conduct of Operations Requirements for SPR Facilities
SPRPMO O 430.1B	12/14/07	SPRPMO Reliability, Availability and Maintainability Program
Change 1	12/23/08	
SPRPMO O 431.1	02/11/08	SPR Design Criteria
SPRPMO O 432.1B	05/13/09	SPR Facilities/Equipment Turnover and Startup Procedure
SPRPMO O 433.1B	09/27/07	Maintenance Management Program
SPRPMO O 434.1C	03/12/08	Recovery Program
SPRPMO O 440.2B	02/27/08	Aviation Implementation Plan
SPRPMO O 440.4	08/16/07	Policy on Preventing Violence in the Workplace
SPRPMO O 451.1C	01/26/07	SPRPMO National Environmental Policy Act (NEPA) Implementation Plan
SPRPMO O 471.4	06/30/04	Reporting Incidents of Security Concern
SPRPMO O 534.1	03/15/02	Financial Accounting for the SPR Crude Oil Inventory
Change 1	05/14/03	
SPRPMO M 243.1-1C	04/10/06	Records Disposition Manual
SPRPMO M 410.1-1A	11/10/03	Configuration Management Program Manual
Change 1	08/30/06	
SPRPMO M 413.1-1A	02/20/09	Crude Oil Quality Program and Test Criteria Manual
SPRPMO M 414.1-1A	09/30/03	Quality Assurance Manual
SPRPMO M 434.1-1B	07/15/02	Petroleum Accountability Manual
Change 1	03/25/03	
SPRPMO M 442.1-1A	06/04/02	Employee Concerns Manual
Change 1	08/25/04	
SPRPMO M 450.1-1B	03/26/09	Environment Safety and Health Manual
SPRPMO M 470.4-1	07/13/07	SPRPMO Security Manual
SPRPMO N 450.3	12/04/08	SPR Environment Safety and Health Performance Goals, FY 2009